

A. 1

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020 (MG)
Debtors.	

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VIDEOTAPE DEPOSITION OF MARK RENZI

New York, New York

November 7, 2012

1:08 p.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27640

November 7, 2012

1:08 p.m.

Deposition of MARK RENZI, held
at the offices of Kramer, Levin, Naftalis
& Frankel, 1177 Avenue of the Americas,
New York, New York, pursuant to Notice,
before Erica L. Ruggieri, Registered
Professional Reporter and Notary Public of
the State of New York.

1 MARK RENZI

2 A. Could you repeat exactly the way
3 you said that.

4 Q. Mr. Devine recommended using 3
5 billion, 4 billion and 6 billion dollar
6 valuations as the low, medium and high
7 valuations, correct?

8 A. That's what the first sentence
9 says, yes.

10 Q. And those are the very
11 valuations that appear in the April 25th
12 presentation, correct?

13 A. Yes, they are.

14 Q. Okay. In addition, Mr. Devine
15 recommended in his second paragraph using
16 a \$750 million contribution from AFI as
17 opposed to a \$1 billion contribution,
18 correct?

19 A. I see that in the first sentence
20 of his second paragraph.

21 Q. And the April 25th presentation
22 in fact used a maximum of a \$750 billion
23 contribution from AFI, correct?

24 A. He does use 750 million as one
25 of the, one of the scenarios.

A. 2

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Debtors.	

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H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF THOMAS MARANO

New York, New York

November 12, 2012

9:56 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27645

November 12, 2012

9:56 a.m.

Deposition of THOMAS MARANO,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

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2 negotiation, I didn't ask him, you know,
3 for this specific number. So I can't -- I
4 just don't know.

5 Q. I thought you testified a minute
6 ago that you always asked him for more.

7 Are you saying just generally?

8 A. Whenever I negotiated anything
9 with Michael, I always asked for more.

10 Q. Okay. So are you saying that
11 you never had occasion to discuss with
12 Mr. Carpenter the amount that AFI was
13 willing to pay or that you thought should
14 be paid by AFI to ResCap to settle claims?

15 A. Not in the context of
16 negotiating the deal. But I had expressed
17 numbers that I felt were, you know, higher
18 than we were able to get.

19 Q. What numbers did you express?

20 A. Now, my general view was it
21 probably would take something close to
22 \$2 billion to settle this.

23 Q. And you expressed that to
24 Mr. Carpenter?

25 A. I expressed that to

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2 Mr. Carpenter, definitely.

3 Q. Did you express it to other
4 members of the ResCap board?

5 A. Yes.

6 Q. Did you express it to all of the
7 other members of the ResCap board?

8 A. I was fairly vocal in what I
9 thought it would take to get a deal done.
10 My view is it would take a couple billion
11 dollars, that no one was going to do a
12 deal for 750.

13 Q. And during what period of time
14 or over what period of time did you
15 advocate for a number in the range of
16 \$2 billion from AFI?

17 A. I wouldn't use the phrase
18 "advocate." I would say expressed my view
19 of how to get a settlement --

20 Q. Fine.

21 A. -- or, pardon me, a deal. And
22 in that context, I would say, you know,
23 over the spring of this year.

24 MR. KAUFMAN: Let's mark as the
25 next exhibit, Ally Financial, Inc.'s

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2 aware that certain minimum thresholds of
3 investors had to be aggregated in order to
4 bring a successful claim against ResCap as
5 it related to securities litigation.

6 Q. So you understood that in order
7 for a claim even to be asserted there had
8 to be at least some aggregation of
9 investors that had some influence over the
10 trusts?

11 A. Yes.

12 Q. Did you also understand that
13 there were potential statute of
14 limitations defenses to those claims?

15 A. Yes. Under the same basis.

16 Q. Okay. And did you also
17 understand that there was a legal
18 requirement that in order to recover on
19 such claims the claimants would have to
20 demonstrate that their losses were caused
21 by breaches of representations and
22 warranties in the governing agreements?

23 MR. JURGENS: Objection to form.

24 MS. PATRICK: Objection to form.

25 A. That's a level of complexity I

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2 first.

3 Let's mark instead an e-mail
4 dated March 27, 2012, from Mr. Marano
5 to Michael Carpenter, Timothy Devine
6 and Tammy Hamzephour. Bates numbers
7 00092054 to 2056.

8 (9019 Exhibit 56, e-mail dated
9 March 27, 2012, Bates 00092054 to
10 2056, marked for identification, as of
11 this date.)

12 MS. PATRICK: ResCap?

13 MR. KAUFMAN: Yes.

14 MR. PRINCI: This is 56?

15 MR. KAUFMAN: I think this is
16 56.

17 Q. Let me show you what we just
18 marked. Did you send this e-mail to
19 Mr. Carpenter, Mr. Devine, Ms. Hamzephour,
20 Mr. Solomon and Jeff Brown on March 27,
21 2012?

22 A. Yes.

23 Q. And did your e-mail forward to
24 them an e-mail you had received a few
25 minutes earlier from Didric Cederholm of

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2 Elliott Management?

3 A. Yes.

4 Q. And Mr. Cederholm's e-mail
5 summarized a telephone conversation he had
6 with you regarding the statute of
7 limitations defenses to put-back claims,
8 correct?

9 A. Yes.

10 Q. Mr. Cederholm pointed out,
11 didn't he, that put-back claims are based
12 on alleged breaches of contract and that
13 if the claimed breach is in the reps and
14 warranties made in the contract the
15 claimant must assert the breach within the
16 applicable limitations period?

17 A. What was the question?

18 MR. KAUFMAN: Read it back,
19 please.

20 (Record read.)

21 A. That is what he asserts in this
22 e-mail and it is generally what he
23 discussed on the telephone, yes.

24 Q. And did you understand from what
25 Mr. Cederholm was telling you that

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2 applying a six-year statute of limitations
3 that exists in New York, that should in
4 2012 bar any put-back claims based on
5 contracts made before 2006?

6 MR. PRINCI: Objection as to
7 form.

8 A. I understood his position and I
9 understood what his opinion was but he was
10 not counsel and I'm not even sure if he's
11 a lawyer. He's just a guy who bought
12 bonds who is trying to make an argument
13 for what the bonds were worth. I relied
14 on counsel.

15 Q. I wasn't asking what you relied
16 or even if you relied on it. I just
17 wanted to know when you received the
18 e-mail and read it you understood that's
19 what he was saying?

20 A. I understood that's what his
21 assertion was.

22 Q. Okay. So did you understand
23 from what he was telling you, at least
24 from his view, that in light of the
25 statute of limitations there should be

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2 zero put-back liability for PLS deals done
3 in 2004 and 2005?

4 MR. PRINCI: Objection as to
5 form.

6 A. Again, that was his opinion.
7 The reason why I copied, as you can see,
8 the attorneys on the top here was I was
9 interested in their opinion.

10 Q. Did any of those to whom you
11 sent Mr. Cederholm's e-mail ever get back
12 to you and express a view as to what he
13 said to you?

14 A. I do believe there was
15 discussion with Tim Devine on this matter
16 and probably Tammy as well. And my
17 recollection of the discussion was he --

18 MR. PRINCI: No, don't.

19 THE WITNESS: Oh, counsel. I'm
20 sorry.

21 Q. Shifting gears. Mr. Marano, you
22 knew that the settlement being negotiated
23 with Kathy Patrick and Talcott Franklin
24 was contingent on their signing plan
25 support agreements with ResCap, didn't

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2 agreement.

3 Q. Mr. Schrock wrote back to
4 Mr. Nashelsky that AFI would make a cash
5 contribution to the debtors of
6 \$750 million and would agree to share the
7 proceeds of any sale of Ally's mortgage
8 servicing rights if the buyer paid at
9 least \$1.1 billion and assumed rep and
10 warranty liability associated with those
11 rights, correct?

12 A. He describes -- he describes
13 what would happen if they did sell the
14 MSR, yes.

15 Q. Was that consistent with your
16 understanding at the time as to the amount
17 AFI was offering to pay for a settlement
18 of its claims or ResCap's claims against
19 it?

20 A. Yeah. I want to be clear. My
21 recollection was there had been talk of a
22 750 settlement. Then there was an effort
23 to try and get additional proceeds above
24 the 750. Keep in mind Mr. Mack and Ilany
25 did most of this negotiation or all this

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negotiation. At one point in order to get more money from Ally, something above 750, there apparently was a discussion of Ally selling their MSR and contributing some portion of the MSR to ResCap. When this was brought to my attention I thought it was an interesting idea because it added more value to the estate not only from the cash value but it maintained a servicing asset that could have been sold away from the estate.

So in looking at the e-mail what I see is an agreement where they either give 750 or what will happen is they will sell their MSR which they believe to have a value of somewhere around a billion one. And the first 850 of proceeds would go to -- the first 850 I believe would go to ResCap. Then anything between 850 and a billion one would go to Ally. And then anything between a billion one and a higher number would be split 50/50. And I was trying to understand if this was a concept -- you know, what this concept was

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2 and if it was going to make it into the
3 plan support agreement.

4 Q. And did the terms set forth in
5 Mr. Schrock's e-mail in fact become the
6 terms of the agreement between AFI and
7 ResCap?

8 A. No, I don't believe they did.

9 Q. What aspects of what's in his
10 e-mail did not?

11 A. The 750 did. The sale of the
12 MSR and the allocation of those proceeds I
13 do not believe made it into the plan
14 support agreement.

15 Q. Do you know why not?

16 A. I think it became too complex to
17 incorporate into the document.

18 Q. From what source do you obtain
19 that understanding?

20 A. It's just, you know,
21 recollection there was debate about could
22 you sell it, could you not sell it, what
23 would it be worth, and in the end
24 Mr. Ilany and Mr. Mack decided, I believe,
25 to take the 750 or Mr. Carpenter decided

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2 dated May 9, 2012, notifying the board
3 of a meeting on May 9, 2012, at
4 3:00 p.m., attached to which is a
5 several page analysis that was
6 presented at that meeting. Bates
7 numbers RC 9019_0093180 through 3183.

8 (9019 Exhibit 60, e-mail from
9 Gary Lee dated May 9, 2012, Bates RC
10 9019_0093180 through 3183, marked for
11 identification, as of this date.)

12 Q. Let me show you what we have
13 marked. Did you receive this e-mail and
14 the attachment from Mr. Lee on May 9,
15 2012?

16 MR. PRINCI: Just give me one
17 minute to read the document.

18 A. Yes.

19 Q. And Mr. Lee attached or sent his
20 e-mail at 2:38 p.m. on May 9th. Do you
21 see that?

22 A. Yes.

23 Q. And that was 22 minutes before
24 the scheduled meeting at 3:00 p.m., right?

25 A. Yes.

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2 Q. Is that when you first received
3 the supporting materials he attached to
4 his e-mail?

5 A. I honestly couldn't tell you but
6 I'm sure I got them at that time.

7 Q. Okay. Were any other written
8 materials besides the ones attached as
9 part of this exhibit provided to the board
10 in advance of the meeting?

11 A. Not that I can recall.

12 Q. Were you and other members of
13 the board told before the May 9th meeting
14 the terms of the proposed settlement with
15 Ms. Patrick?

16 A. My recollection was that the
17 discussion with Ms. Patrick was fluid up
18 until the board meeting. And so I
19 can't -- I can't recall, you know, if --
20 you know, it was just fluid. It was
21 ongoing. We were apprised periodically.
22 But it was a fluid negotiation.

23 Q. Wasn't the board being asked to
24 approve the settlement at the May 9th
25 meeting?

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2 A. Yes.

3 Q. So my question is -- well, let
4 me see if I understood your answer. Are
5 you telling me that until the meeting was
6 actually held neither you nor the other
7 board members knew the terms that had been
8 negotiated and agreed upon in principal?

9 A. No, that's not what I'm saying.

10 Q. Okay. So my question is did you
11 know the terms of the negotiated deal
12 prior to the May 9th board meeting?

13 A. I was aware of the general
14 concepts. Negotiations were going down to
15 the wire. I don't know if it moved a
16 little bit between my prior knowledge and
17 the time of the board meeting. It was
18 extremely fluid.

19 Q. How much prior to the May 9th
20 meeting could you have been aware of the
21 final negotiated terms as fluid as you've
22 described the negotiations?

23 MR. PRINCI: Objection to form.

24 Q. What's the earliest you could
25 have been aware?

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2 you within the hour that the board meeting
3 transpired, whether it was 50/50; but
4 there was, you know, a fair amount of
5 time.

6 Q. The entire meeting, according to
7 the minutes, lasted an hour, correct?

8 A. Correct. I just can't tell you
9 whether it was 30 and 30. I don't recall.

10 Q. Is it your best recollection
11 that it was split approximately equally
12 between the two matters?

13 A. I don't recall how much time was
14 spent on each matter.

15 Q. In the next-to-last paragraph on
16 the first page, the minutes say that
17 during the discussion you requested that a
18 report with separate line items
19 identifying the different settlement
20 amounts be prepared to provide the board
21 with additional details on the
22 settlements.

23 Do you see that?

24 A. Yes.

25 Q. Why did you want that

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2 information?

3 A. For purposes of clarity.

4 Q. Clarifying what?

5 A. To help to make sure the board
6 understood, you know, the components that
7 made up the rep and warrant and PLS
8 settlement.

9 Q. Was that report provided during
10 the course of the hour meeting?

11 A. I do not believe it was.

12 Q. Why didn't you adjourn the
13 meeting until you got the information you
14 were looking for?

15 A. I think -- my recollection of
16 this meeting is that we had enough of a
17 basis to determine whether or not the
18 settlement agreement was fair, and this
19 was just clarifying details.

20 Q. Was there a written presentation
21 that accompanied the May 9th meeting?

22 A. I don't recall if there was a
23 presentation.

24 Q. Wasn't it the two-page document
25 we looked at before that you got --

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2 release and resolve claims of certain
3 institutional investors; is that correct?

4 A. Yes.

5 Q. Do you have an understanding as
6 to whether the RMBS settlement agreement,
7 if approved and becomes effective, would
8 also release claims of financial guarantee
9 providers like MBIA?

10 A. I'd have to review the document
11 to be sure if that's in there or not.

12 Q. Okay. Why don't we look at
13 Exhibit 58 and specifically section 8.02
14 of that agreement. And I believe that's
15 on page 8, I think.

16 A. Yes. Okay, I'm looking at that.

17 Q. Have you seen section 8.02 of
18 the RMBS settlement agreement previously?

19 A. Yes, I have.

20 Q. What is your understanding of
21 the claims of financial guarantee
22 providers that would not be released under
23 the settlement pursuant to section 8.02 of
24 the agreement?

25 MR. PRINCI: Objection as to

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2 form.

3 A. You know, I believe what this is
4 saying and -- 8.02 basically releases --
5 it says that the financial guarantors are
6 not released by the waivers in Article 7.

7 Q. I see you are reading the
8 agreement. I don't want to interrupt. Is
9 that your answer?

10 A. Yes.

11 Q. So do you have an understanding
12 as to whether if the settlement agreement
13 that's Exhibit 58 becomes, is approved by
14 the court and becomes effective that
15 financial guarantee providers like MBIA
16 still will have claims to pursue against
17 the debtors?

18 MR. PRINCI: Objection, the
19 document speaks for itself but you can
20 answer to the extent you --

21 A. I believe you can file your own
22 claim.

23 Q. Do you have an understanding as
24 to what types of claims financial
25 guarantee providers like MBIA could file?

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2 you those updates?

3 A. I would receive those updates
4 from either Mr. Mack or Mr. Ilany but they
5 would be of a nature of we are talking to
6 Carpenter.

7 Q. Did you ever tell Mr. Ilany or
8 Mr. Mack that you thought \$2 billion was a
9 reasonable number to settle with Ally
10 Financial?

11 A. Again, just to make sure the
12 record is clear, I communicated to many
13 people that I thought that we would not be
14 able to settle with the bondholders or buy
15 their peace for less than \$2 billion.
16 That wasn't necessarily based on the
17 merits of the claims in the end when the
18 work was completed.

19 Q. I understand but did you tell
20 Mr. Ilany and Mr. Mack that you thought \$2
21 billion was a reasonable number?

22 MR. PRINCI: Objection. Asked
23 and answered.

24 You can answer it again.

25 A. They knew my views.

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2 Q. So they knew?

3 A. [Witness nods.]

4 Q. What was the initial ask by
5 ResCap's board to Ally in connection with
6 the Ally set of negotiations?

7 MR. PRINCI: Objection to form.

8 You can answer the question if
9 you wish to.

10 A. I don't actually recall but it
11 was a really big number. It was much
12 bigger than \$2 billion.

13 Q. Was it \$3 billion?

14 A. You know, if I recalled the
15 exact number, it was very big. Ally's
16 reaction was NF, we'd rather litigate.

17 Q. Do you recall if it was more
18 than \$10 billion?

19 A. No, I don't think it was over 10
20 billion.

21 Q. Do you recall if it was more
22 than 5 billion?

23 A. I would say, you know, it had to
24 be somewhere south of 5. I just don't --
25 I don't recall the exact number.

A. 3

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)

Debtors.

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H I G H L Y C O N F I D E N T I A L

VIDEOTAPE DEPOSITION OF TAMMY HAMZEPHOUR

New York, New York

November 13, 2012

9:43 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27903

November 13, 2012

9:43 a.m.

Deposition of TAMMY HAMZEPHOUR,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

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2 A. I believe it was the 21st. I
3 don't know for sure.

4 MR. KAUFMAN: Let's mark, as the
5 next exhibit, an e-mail chain on
6 November 19, 2011, Bates number ResCap
7 0000097 and 98.

8 (9019 Exhibit 69, 11/19/11
9 e-mail chain, Bates number ResCap
10 0000097 and 98, marked for
11 identification, as of this date.)

12 Q. Looking at the e-mail appearing
13 at the top of the first page of the
14 exhibit, you were the author of that
15 e-mail, were you not?

16 A. Yes.

17 Q. And does that confirm to you
18 that the meeting with Ms. Patrick was on
19 November 21st?

20 A. Yes, that's right.

21 Q. Who attended that meeting?

22 A. Ms. Patrick was there. One or
23 two people were with her, I don't remember
24 their names. I was there, my litigation
25 colleague, David Hagens, was there from

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2 the Minneapolis office. Also my capital
3 markets partner, John Ruckdaschel, was
4 there, and Tim Devine from Ally.

5 Q. How long did the meeting last?

6 A. Three hours, maybe. I don't
7 remember exactly.

8 Q. Can you please describe for me,
9 in as much detail as you can remember,
10 what the discussion was?

11 A. Ms. Patrick did most of the
12 talking in the beginning of meeting. She
13 talked to us a bit about who her investor
14 clients were and their holdings that were
15 represented across the spectrum of our
16 securitization deals. She indicated that
17 they believed they have claims against us
18 and against Ally.

19 We talked about some of the work
20 she had done in preparation for the
21 meeting, and she mentioned that she had
22 reviewed our prospectuses for the deals,
23 that she had reviewed loan and servicing
24 agreements, that she was familiar with the
25 structure and the language and the

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2 disclosures as across those deals, and
3 that she had created a matrix of rep and
4 warranty language, basically, among the
5 deals.

6 She spoke a little bit about her
7 pending settlement with Bank of America.

8 She mentioned that she had not
9 notified any of the trustees about the
10 meeting we were having, because we asked
11 if the trustees knew that she was there,
12 and she said no.

13 Talked about her theory of the
14 case. She felt that she had claims, rep
15 and warranty breaches, also servicing
16 claims; and she felt that they had
17 extended both to GMAC Mortgage and RFC,
18 who were sponsors of different
19 securitizations in which her investors had
20 an interest.

21 And also that they viewed Ally,
22 likewise, as responsible.

23 Q. Who said what on the ResCap and
24 Ally side, as best you can remember?

25 MR. RAINS: Objection. Vague

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2 and ambiguous.

3 Q. Can you remember anything that
4 you, Mr. Devine, Mr. Hagens, and
5 Mr. Ruckdaschel said during the course of
6 the meeting?

7 A. I remember Mr. Ruckdaschel
8 asking her some questions about deal
9 structures, certain provisions in the
10 agreements, and they compared views on
11 what those might be, what the answers to
12 those issues might be. Tim asked her what
13 she would see as success from a
14 discussion. She was clearly there asking
15 for a settlement negotiation, and so he
16 asked her what her view of success would
17 look like.

18 We just -- you know, there was
19 the normal back and forth of any meeting.
20 I don't remember anything more specific
21 than that.

22 Q. When Mr. Devine asked
23 Ms. Patrick what her view of success was,
24 what did she say?

25 A. That she would like to arrive at

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2 an agreed settlement with us and would
3 like to start that out by getting access
4 to data and information to help refine
5 their exposure analysis.

6 Q. Have you now given us your best
7 recollection of everything that was
8 discussed during the course of the
9 November 21st meeting?

10 A. We talked about next steps and
11 follow-up, in terms of her giving us some
12 specifics of what sort of data she would
13 be looking for and whether or not we could
14 provide it. Yeah, that's my best
15 recollection of the substance of meeting.

16 MR. KAUFMAN: Let's mark, as the
17 next exhibit, an e-mail chain between
18 November 30, 2011 and December 5,
19 2011, Bates number ALLY 0209275.

20 (9019 Exhibit 70, e-mail chain
21 between 1/30/11 and 12/5/11, Bates
22 number ALLY 0209275, marked for
23 identification, as of this date.)

24 Q. The first e-mail in the chain at
25 the bottom of the page, on November 30,

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2 A. That's right.

3 Q. And he explained some of the
4 reasons for the markups, did he not?

5 A. Yes.

6 Q. Was Mr. Devine responsible for
7 the markups?

8 A. I don't remember if he was the
9 only person that provided comments or not,
10 but he had the pen. He was doing the
11 markup.

12 Q. And did Mr. Devine assume a
13 similar role in planning how to deal with
14 Talcott Franklin, after he surfaced?

15 A. Yes.

16 MR. KAUFMAN: Let's mark, as the
17 next exhibit, an e-mail chain between
18 February 10th and February 28, 2012,
19 Bates numbers ALLY 0210969 through
20 971. Is that right? Yeah.

21 (9019 Exhibit 74, e-mail chain,
22 Bates numbers ALLY 0210969 through
23 971, marked for identification, as of
24 this date.)

25 Q. Let me show you what we have

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2 Ms. Patrick take place on April 25, 2012?

3 A. Yes.

4 Q. And was a waterfall presentation
5 given to her during that meeting?

6 A. Yes.

7 Q. Did the presentation incorporate
8 the 3, 4, 6 numbers recommended by
9 Mr. Devine for the low, medium and high
10 valuations of ResCap's RMBS exposure?

11 A. Yes, I believe it did.

12 Q. Did it also incorporate
13 Mr. Devine's recommendation to use
14 \$750 million rather than \$1 billion as
15 AFI's potential contribution towards a
16 settlement?

17 A. I believe there were a range of
18 potential AFI contributions reflected.
19 750 would have been the highest one in the
20 range.

21 Q. Okay. Who attended the meeting
22 on April 25th with Ms. Patrick?

23 A. There were a lot of people.
24 Maybe as many as are in this room. I'll
25 tell you the ones I can remember. Gary

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2 Lee was there, Tim Devine, Mark Renzi from
3 FTI, I believe John Ruckdaschel was
4 present, Ms. Patrick. At least one, maybe
5 two of her colleagues. I believe Marc
6 Puntus or Sam Greene, one or the other,
7 from Centerview Partners was there for at
8 least part of the meeting. I don't
9 remember if they stayed for the whole
10 meeting. And there may have been one or
11 more MoFo lawyers there, I don't recall.

12 Q. You were there?

13 A. Sure. I was there. I couldn't
14 tell you who was in the room if I weren't
15 there.

16 Q. Who led the meeting?

17 A. Gary Lee.

18 Q. Did you --

19 A. From a legal perspective Gary
20 Lee. There were parts of the meeting that
21 different people were handling so.

22 Q. What part, if any, did you
23 handle?

24 A. I didn't take the lead on any of
25 the issues other than we had a short

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 discussion on servicing standards. And we
3 talked about part of Ms. Patrick's
4 interest and that of her clients was in
5 not only achieving a monetary settlement
6 but also a settlement that would provide
7 enhanced servicing standards for their
8 investors' continuing interest in these
9 loans.

10 Q. Who made the waterfall
11 presentation?

12 A. I believe Mark Renzi from FTI
13 did that.

14 Q. What was Mr. Devine's role
15 during the meeting as you understood it?

16 A. What was his role?

17 Q. What did he do?

18 A. He was in the meeting. I don't
19 remember specific parts of the
20 conversation that he led. There were --
21 there was discussion around the waterfall
22 and the ranges of recoveries, losses, et
23 cetera, that were the topic of discussion
24 around the settlement. He participated in
25 that.

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 A. No.

3 Q. You weren't coordinating that,
4 were you?

5 A. No. Gary Lee was coordinating
6 that.

7 Q. Who was the one who was
8 communicating with Ms. Patrick about the
9 status of the documents?

10 MR. RAINS: Objection. Assumes
11 facts not in evidence.

12 Q. To your knowledge?

13 A. Gary was communicating with her
14 and Tim as well. I assume K&E was
15 involved for Ally.

16 Q. Okay. Was Mr. Devine
17 coordinating the negotiations with
18 Ms. Patrick concerning the amount of the
19 allowed claims she would get in a
20 settlement?

21 A. No. He participated in those
22 discussions.

23 Q. What was your participation in
24 that discussion?

25 A. I was present for some of the

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 discussions, not all of them, as they
3 shaped up over a week or two of
4 negotiations. I was aware, I was kept
5 informed by Gary of what was going on and
6 the developments as they were happening.

7 Q. So if I understand you
8 correctly, the people who were
9 communicating with Ms. Patrick over the
10 amount of the allowed claim would have
11 been Mr. Devine and Mr. Lee?

12 A. And Mark Renzi and Jeff
13 Cancelliere and other folks who were in
14 the meetings where these things were being
15 discussed.

16 Q. Okay.

17 MR. KAUFMAN: Let's mark as the
18 next exhibit an e-mail chain on May 7,
19 2012. Bates numbers RC 9019_00049157
20 through 59.

21 (9019 Exhibit 85, e-mail chain
22 dated May 7, 2012, Bates RC
23 9019_00049157 through 59, marked for
24 identification, as of this date.)

25 Q. Please take however long you

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 Q. Do you recall weighing in, if
3 not in writing, orally, in direct response
4 to Mr. Devine's 10:14 p.m. e-mail on
5 May 7th?

6 A. I don't remember weighing in on
7 it. He wasn't asking me a question either
8 so.

9 Q. Okay.

10 MR. KAUFMAN: Let's mark as the
11 next exhibit a May 8, 2012 e-mail from
12 Mr. Devine. Bates number RC
13 9019_00047906.

14 (9019 Exhibit 86, May 8, 2012
15 e-mail from Mr. Devine, Bates RC
16 9019_00047906, marked for
17 identification, as of this date.)

18 Q. Looking at the exhibit we just
19 marked, did you receive a copy of this
20 e-mail?

21 A. Yes.

22 Q. And in this e-mail Mr. Devine
23 reported on a conversation he had that
24 morning with Talcott Franklin, correct?

25 A. Yes.

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 Q. Who authorized you to sign it?

3 A. I don't think anyone gave a
4 specific direction to sign it.

5 MR. KAUFMAN: Just take a few
6 minute break.

7 THE VIDEOGRAPHER: The time is
8 11:36 a.m. and we are off the record.

9 (Whereupon, there is a recess in
10 the proceedings.)

11 THE VIDEOGRAPHER: The time is
12 11:55 a.m. and we are back on the
13 record.

14 Q. Ms. Hamzephour, I just have a
15 couple of questions more.

16 A. Sure.

17 Q. I understand that you may have
18 had one or two telephone calls with
19 Ms. Patrick in or around November of 2011
20 in connection with the first meeting with
21 her in Minneapolis. Did you have any
22 telephone calls with her in 2012?

23 A. Not one-on-one that I remember.

24 Q. You have been identified as the
25 debtors -- one of the debtors fact

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 A. That was my understanding.

3 Q. Why was that method chosen?

4 MR. RAINS: Can I, just to be
5 clear, you are asking her
6 understanding back in August when she
7 signed this?

8 MR. BULL: Correct. As the
9 signatory of the document.

10 MR. RAINS: I mean, it's been
11 replaced. That's the point of my
12 question. You are asking what her
13 understanding was at the time she
14 signed the agreement. But go ahead.

15 THE WITNESS: Okay.

16 Q. Why was this method chosen?

17 A. The method of allocation was the
18 subject of negotiation between the
19 parties.

20 Q. Were you part of those
21 negotiations?

22 A. I was involved in some of them,
23 not all of them. Not present for every
24 negotiation -- not present for every
25 conversation.

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 claim.

3 A. That's right.

4 Q. Okay. Do you know if anybody at
5 ResCap made any determination as to
6 whether the legal fees in provision RMBS
7 settlement agreement was -- provided
8 reasonable fees for the Steering
9 Committee's counsel?

10 A. I don't believe so.

11 Q. Let's turn to section 8.02. Are
12 you familiar with -- section 8.02 is
13 entitled Financial Guarantee Provider
14 Rights and Obligations. Do you see that?

15 A. Yes.

16 Q. Are you familiar with this
17 section of the agreement?

18 A. Yes.

19 Q. What is your understanding of
20 this section of the agreement.

21 A. That the releases provided don't
22 act to release claims of financial
23 guarantee providers.

24 Q. Is that any claims of financial
25 guarantee providers or certain claims?

1 TAMMY HAMZEPHOUR - HIGHLY CONFIDENTIAL

2 A. If we don't have -- in my view,
3 in my understanding if we don't have a
4 settlement with the insurance provider
5 this document does not release any claims
6 that those insurance providers have
7 against the debtors with respect to those
8 participating trusts. Is that what you
9 are --

10 Q. That's --

11 A. I'm trying to understand. I
12 think that's what you are asking.

13 Q. That is what I'm asking. And
14 that is -- that is -- if that's your
15 understanding, that's what I want to know.

16 A. That's my understanding.

17 MR. SIDMAN: Give me one second.

18 THE WITNESS: Okay.

19 MR. RAINS: Somebody got mad at
20 that answer and hung up on you.

21 MR. SIDMAN: Just give me one
22 second. I want to look at my notes.

23 THE WITNESS: Sure.

24 MR. SIDMAN: Can we go off the
25 record just for one second.

A. 4

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020 (MG)
Debtors.	

-----x

VIDEOTAPE DEPOSITION OF JOHN MACK

New York, New York

November 14, 2012

9:53 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27647-A

November 14, 2012

9:53 a.m.

Deposition of JOHN MACK, held at
the offices of Kramer, Levin, Naftalis
& Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

1 JOHN MACK

2 and negotiated the \$8.5 billion
3 settlement. Let the games begin."

4 And you see it attaches a letter
5 from a woman by the name of Kathy Patrick.

6 A. Uh-hum.

7 Q. And so my question is, first,
8 have you ever seen this e-mail or letter
9 before?

10 A. No.

11 Q. Were you told, before joining
12 the ResCap board, about Ms. Patrick's
13 demand?

14 A. No.

15 Q. Were you told the games had
16 begun?

17 A. No.

18 MR. PRINCI: Objection as to
19 form.

20 Q. At what point after joining the
21 ResCap board did you learn about this
22 demand and about this issue?

23 A. Well, Ms. Patrick's name came
24 up, it would have been in late April, mid
25 to late April or early May of this year,

1 JOHN MACK

2 before the petition was filed.

3 Q. So between -- between
4 October 19th, 2011, when this e-mail,
5 which is Exhibit 92, is dated, and April
6 or May, you never heard that there was a
7 demand being made for a settlement of the
8 RMBS claims?

9 MR. PRINCI: Objection as to
10 form.

11 MR. PIEDRA: Objection to form.

12 A. Yeah, I think that's correct. I
13 don't think I knew about it, other than,
14 broadly speaking, that we would have been
15 in conversations with some investors; but
16 beyond that, no, nothing specific.

17 Q. When you say --

18 A. And nothing with her name
19 attached it to until very late in the
20 process.

21 Q. So you knew nothing specific and
22 nothing with her name attached to it,
23 until basically April, May; is that fair?

24 A. Correct.

25 Q. What did you know earlier than

1 JOHN MACK

2 second day. I was introduced.

3 Q. So I take it it's fair to say
4 you never directly participated in any of
5 the negotiations of that settlement?

6 MR. PIEDRA: Objection to form.

7 A. That is correct.

8 Q. And did you indirectly
9 participate in some way in those
10 negotiations?

11 MR. PRINCI: Objection as to
12 form.

13 A. No.

14 Q. Okay. When you learned about
15 them in April or May, at that point it
16 was -- is it fair to say, was it
17 understood by the ResCap board that any
18 resolution of these claims for a
19 settlement would have to be accomplished
20 in a Chapter 11 proceeding?

21 MR. PIEDRA: Object to the form.

22 A. They would have been part of the
23 bankruptcy process. I think I can say
24 that --

25 Q. Okay.

1 JOHN MACK

2 steps to protect against the risk that I
3 just identified?

4 MR. PIEDRA: Objection to form.

5 MR. PRINCI: Objection as to
6 form.

7 A. Could you -- I'm not sure I
8 understand your question.

9 Q. Okay. I identified what I
10 believe is a risk, which is, which is that
11 to the extent that AFI controlled the
12 negotiations with Ms. Patrick, their
13 primary objective would be to obtain a
14 settlement, rather than a lower claim.
15 And I'm asking whether the board took any
16 steps to protect against that risk.

17 MR. PRINCI: Objection, assumes
18 a facta not in evidence. Object to
19 the form.

20 But if you understand the
21 question, you may answer.

22 A. Well, I can't speak for AFI. I
23 can only say that at ResCap, I didn't know
24 AFI was having conversations with
25 Ms. Patrick. I had no idea.

1 JOHN MACK

2 Q. Now, what did you understand --
3 who did you understand was the business
4 person that was taking the leading role in
5 the RMBS settlement negotiations with
6 Ms. Patrick?

7 A. At ResCap, it would have been
8 Tom Marano.

9 Q. Was your understanding that he
10 was the one taking the lead in the
11 negotiations?

12 A. No.

13 Q. Who did you understand was
14 taking the lead in the negotiations?

15 A. Our advisors. In this case, it
16 would have been people at, attorneys at
17 MoFo.

18 Q. Okay. And what attorney?

19 A. I don't recall, specifically,
20 but I would have to -- I would have to say
21 Gary Lee, probably.

22 Q. Is it fair to say that you
23 viewed MoFo and Gary Lee as the attorneys
24 for ResCap?

25 A. Oh, they are.

1 JOHN MACK

2 Q. What about K&E and Timothy
3 Devine, did you view them as your lawyers
4 or as AFI's lawyers or something else?

5 MR. PRINCI: Objection as to
6 form.

7 A. AFI's lawyers.

8 MR. PRINCI: Excuse me one
9 second. Just pause for one second,
10 Tom.

11 MR. MOLONEY: Wait a second.
12 You can just tell them that he needs
13 to wait -- I'll put it on the record
14 that you need to wait to allow
15 Mr. Princi to state his objection.

16 I think we should note now that
17 counsel is conferring with the
18 witness, and it's not appropriate.

19 Q. What did you understand Timothy
20 Devine's position to be?

21 A. I don't know Timothy Devine.

22 Q. Okay. Do you know whether or
23 not he had a role in negotiating the RMBS
24 deal with Ms. Patrick?

25 A. No.

1 JOHN MACK

2 Q. Did it concern you, if he was
3 the chief of litigation for AFI, and he
4 took the lead in the settlement
5 negotiations and negotiated material terms
6 of the RMBS with Kathy Patrick, without
7 the involvement of Morrison & Foerster?

8 MR. PIEDRA: Objection to form.

9 MR. PRINCI: Objection to form.

10 MR. MOLONEY: Noted.

11 Q. You may answer.

12 A. Generically speaking, yes, I
13 would not understand that.

14 Q. As of May 2012, was there any
15 real connection between the amount that
16 the ResCap board was going to require AFI
17 to contribute to a Chapter 11 resolution
18 and the size of the RMBS claim that was
19 negotiated with Ms. Patrick?

20 A. No.

21 Q. So at least as of May 2012,
22 there was no additional cost to AFI in
23 agreeing to a larger claim from
24 Ms. Patrick's clients, in return for an
25 AFI release, correct?

1 JOHN MACK

2 MR. PIEDRA: Objection to form.

3 MR. PRINCI: Objection to form.

4 A. I'm not sure I understand. I'm
5 not -- I'm ResCap, I'm not part of AFI.
6 So I don't understand why -- I just don't
7 understand.

8 Q. That's okay. Let's change
9 topics.

10 As a member of the ResCap audit
11 committee, what involvement, if any, did
12 you have in reviewing AFI or ResCap group
13 financial statements?

14 A. We met at least quarterly to
15 review that quarter's financial
16 statements.

17 Q. And I take it when you joined
18 the board in 2011, ResCap was no longer
19 filing public financial statements itself,
20 correct?

21 A. Correct.

22 Q. It was still preparing financial
23 statements, correct?

24 A. Correct.

25 Q. Was it preparing stand-alone

1 JOHN MACK

2 I'm asking, did you ever get an
3 explanation of what litigation defenses
4 might be available to ResCap to defend
5 against these potential claims?

6 MR. PIEDRA: Object to the form.

7 A. No.

8 Q. For example, were you ever
9 informed that a number of the claims could
10 be eliminated, due to statute of
11 limitations defenses?

12 MR. PRINCI: Just to the extent
13 that you were informed of any such
14 thing by counsel, then I'm going to
15 direct you not to answer.

16 MR. MOLONEY: Okay. I'm just
17 withdrawing my question. We will go
18 on to another area.

19 Q. Now, if we look at the -- before
20 we leave this page, if we look at the
21 number 400, that's -- this estimate
22 includes securities litigation, right?

23 A. Yes, it says so.

24 Q. Okay. Thank you.

25 And now, going on in the same

1 JOHN MACK

2 \$4 billion was an estimate, but this was a
3 negotiated number, the 8.7?

4 A. Correct.

5 Q. Now, it wasn't determined by a
6 court that ResCap was liable for \$8.7
7 billion, right?

8 A. That is correct.

9 Q. So it was just determined by two
10 human beings who negotiated a number, \$8.7
11 billion, right?

12 MR. PRINCI: Objection as to
13 form.

14 A. It was a negotiated number.

15 Q. Who were the two people who
16 negotiated the number?

17 MR. PRINCI: Objection as to
18 form.

19 A. Our advisors from MoFo, and
20 Kathy Patrick, representing the investors.

21 Q. Now, the person who was
22 representing you, your advisor for MoFo,
23 you would think that they should negotiate
24 a number that's consistent with what they
25 think are their potential liabilities, if

1 JOHN MACK

2 they go to court, right?

3 MR. PIEDRA: Objection to form.

4 MR. PRINCI: Objection as to
5 form.

6 A. No.

7 Q. No? Why?

8 A. They can negotiate a number that
9 is in the best interests of trying to get
10 a transaction accomplished.

11 Q. Even if it doesn't bear any
12 resemblance to what the outcome would be,
13 if the case was actually tried in court?

14 MR. PIEDRA: Objection to form.

15 A. I don't know that it would or
16 wouldn't bear any resemblance to what the
17 actual number would be. I couldn't
18 predict the future like that.

19 Q. Did you get any guidance at the
20 board meeting as to what the number would
21 be, if this claim was actually litigated
22 rather than settled?

23 A. No, not that I recall.

24 Q. So this was just a number needed
25 to do a transaction, is what you are

1 JOHN MACK

2 A. Not that I recall at the time.

3 Q. Okay. Let's see if we can
4 understand whether it's lower than the
5 BofA settlement.

6 Before we get there, the defect
7 rate assumed for this settlement was
8 19 percent; is that correct?

9 A. 19.72 is what it says, yes.

10 Q. [REDACTED]

[REDACTED]

[REDACTED]

13 A. That's what I said, yes.

14 Q. Okay. And now, when we looked
15 at Exhibit -- the prior exhibit, there was
16 also a further discount of the number for
17 legal defenses.

18 Do you recall seeing that?

19 A. Uh-hum, uh-hum.

20 Q. Was a legal defense discount
21 applied to the number that's on this page?

22 MR. PIEDRA: Object to the form.

23 A. Not that I recall.

24 Q. Okay. So no consideration of
25 legal defenses?

1 JOHN MACK

2 MR. PIEDRA: Objection to form.

3 MR. PRINCI: Objection.

4 A. No, I don't think that was part
5 of what my consideration was.

6 Q. Now, you say it was less than
7 the BofA settlement; is that what you are
8 telling us?

9 A. The defect rate, our defect
10 rate.

11 Q. I know your defect rate. But
12 the settlement amount actually was,
13 ironically, more than the BofA settlement,
14 right?

15 MR. PIEDRA: Objection to the
16 form.

17 Q. BofA settled for \$8.5 billion,
18 we saw in the prior exhibit.

19 MR. PIEDRA: Do you want an
20 answer to the last question?

21 MR. PRINCI: Which question do
22 you want him to answer?

23 Q. The settlement amount proposed
24 to be paid by ResCap is actually more than
25 the amount proposed to be paid by BofA to

1 JOHN MACK

2 counter. We did not negotiate in that
3 meeting.

4 Q. Okay. Let's see if we can put a
5 time and place on this meeting.

6 MR. MOLONEY: Do we have this?

7 Is this part of the exhibits?

8 Q. Would you look at Exhibit 98 in
9 your pile.

10 (9019 Exhibit 98, meeting
11 minutes, Bates RC40020213-214, marked
12 for identification, as of this date.)

13 A. Uh-hum.

14 MR. PRINCI: Excuse me. Just
15 give me one second. Bear with me.
16 Okay, Mr. Moloney.

17 Q. Did you attend this meeting on
18 or about January 25, 2012?

19 A. Yes, I did.

20 Q. And did you -- if you look at
21 the minutes of meeting there's a reference
22 under Executive Session to the fact that
23 there's a presentation given to the ResCap
24 board essentially about potential claims
25 against Ally and an indication of certain

1 JOHN MACK

2 materials to provide to the board in
3 advance of the meeting.

4 Do you see that?

5 A. Yes.

6 Q. Did you obtain those materials?

7 A. If they were provided to the
8 board I did.

9 Q. Did you keep those materials?

10 A. No.

11 Q. What did you do with them?

12 A. I left them in the board room.

13 Q. You left them in the board room
14 when you left the meeting?

15 A. Yes.

16 Q. On a go-forward basis when you
17 were negotiating with Mr. Carpenter did
18 you need to consult the materials from
19 time to time?

20 A. No.

21 Q. Is it fair to say your
22 negotiations with Mr. Carpenter really had
23 nothing to do with the legal arguments in
24 those materials?

25 MR. PRINCI: Objection as to

1 JOHN MACK

2 form.

3 A. Yes. I'm not going to negotiate
4 on legal issues.

5 Q. Okay. And then there's a
6 reference here to a meeting that occurs
7 with Mr. Carpenter right after this board
8 meeting. This board meeting starts at
9 12:25 and there's a reference to a meeting
10 with Mr. Carpenter right after it, right?
11 It says approximately 3:00 the meeting was
12 adjourned. At approximately --

13 A. Yes, I see that.

14 Q. Half hour meeting with
15 Carpenter. Is that the meeting -- does
16 that kick it off, the process of these
17 negotiations?

18 A. No.

19 Q. Okay. When was the kick-off
20 meeting?

21 A. It was after this.

22 Q. Okay. I'm going to show you a
23 document which we have marked as
24 Exhibit 99.

25 (9019 Exhibit 99, series of

1 JOHN MACK

2 recollection what Mr. Carpenter said at
3 this meeting. What did he say in the
4 presentation?

5 A. Mr. Carpenter made a
6 presentation in which he outlined there
7 were three possible paths forward. One
8 path was just to do a free fall 363
9 bankruptcy. There was a middle path,
10 which I don't really recall many of the
11 details. And the third path was if we
12 could achieve a plan settlement, there
13 would be a greater contribution by Ally in
14 that process. All three involved
15 bankruptcy.

16 Q. Okay. And in connection with
17 that third alternative, did he indicate
18 what the level of contribution would be?

19 A. Yes. He had -- he proposed some
20 numbers and some ancillary items such as a
21 subsidiary which had some cash in it.
22 That subsidiary it turns out had
23 absolutely no value to ResCap. And so,
24 you know, it wasn't part of the, it wasn't
25 part of the equation.

1 JOHN MACK

2 Q. Now, the proposal. What was the
3 numbers that he gave?

4 A. As I recall, he had a three --
5 \$350 million number. And again, there
6 were some ancillary items which in our
7 view ultimately didn't really have
8 value -- add value, so.

9 Q. Did you take notes at this
10 meeting?

11 A. Probably not.

12 Q. Did you report what was, what
13 you learned at the meeting to the other
14 directors or anyone else?

15 A. Yes.

16 Q. And in what format?

17 A. Verbal conversation with our
18 attorneys at MoFo.

19 Q. So you reported verbally to the
20 attorneys at MoFo. Anything else?

21 A. Well, Mr. Ilany was with me so
22 the two of us made the report. We walked
23 back up the street to MoFo's office to do
24 that.

25 Q. And were the other directors

1 JOHN MACK

2 Q. So what -- what happens next?

3 MR. PRINCI: Objection as to
4 form.

5 A. We discussed the proposal.

6 We -- there were -- again there was some
7 items in the proposal that he made that
8 were of no value as we -- as we viewed the
9 situation. And so at a subsequent meeting
10 Jonathan and I went back. Again, it was
11 the same four principals and only the four
12 principals. We went back with a
13 counterproposal seeking to emphasize that
14 we liked and preferred the third
15 alternative, that is I'm going to use the
16 word "elegant," the more elegant process,
17 involving a plan.

18 Q. And what was your
19 counterproposal?

20 A. Well, we wanted -- we pointed
21 out why we didn't contribute or didn't
22 assign value to certain parts of his
23 proposal. We discussed the need to have
24 a, you know, reasonable but I don't
25 believe we were specific as to number, a

1 JOHN MACK

2 reasonable headline number in terms of
3 achieving credibility. And we then
4 encouraged, the four of us, encouraged the
5 advisors who were actually sitting in the
6 next room to work on an agreement that
7 mirrored that.

8 Q. Now, what did you say in terms
9 of the -- the reasons for a reasonable
10 headline number? What reasons did you
11 give to them in support of why it was in
12 their reason for a reasonable headline
13 number?

14 A. Well, it would have been very
15 simple. If the plan was going to have any
16 credibility at all, then we needed a
17 reasonable headline number. Otherwise
18 we'd just get mired into a process which
19 isn't going anywhere and which would in
20 fact not ascribe value to the estate and
21 to the creditors.

22 Q. Okay. Now when you instructed
23 the lawyers to -- to work on an agreement
24 they weren't supposed to be working on the
25 numbers, they were just working on the

1 JOHN MACK

2 apples and oranges. Let's see if we can

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 A. Okay.

8 Q. So just kind of retrace it.

9 A. To my knowledge, no part of the
10 Ally settlement has been allocated to
11 anybody.

12 Q. You certainly as a board didn't
13 make a judgment that -- that weighing the
14 relative merits of the claims of -- that
15 belonged to ResCap LLC versus other claims
16 that might belong to other entities that
17 its claims were only worth 10 percent of
18 the claims belonging to other entities,
19 right?

20 MR. PRINCI: Objection as to
21 form.

22 Q. You didn't make that judgment,
23 right?

24 A. We did not make that judgment.

25 Q. Now, did you understand that as

1 JOHN MACK

2 part of the settlement that was approved,
3 the \$8.7 million settlement, that you were
4 also settling securities claims?

5 A. Yes, it was reps and warranties
6 and securities claims.

7 Q. At any point in time did you
8 ever learn that securities claims were not
9 being picked up by this \$8.7 billion
10 settlement?

11 A. No.

12 Q. So as far as you are concerned,
13 the board has not approved the deal that
14 does not resolve securities claims as part
15 of the \$8.7 billion payment?

16 MR. PRINCI: Objection as to
17 form.

18 A. This is a slightly technical
19 matter. I don't know.

20 Q. Okay.

21 (9019 Exhibit 100, e-mail with
22 attachment, Bates RC 40088324-337,
23 marked for identification, as of this
24 date.)

25 Q. Please look at Exhibit 100 in

1 JOHN MACK

2 Q. You wouldn't -- you wouldn't
3 assign a 500 million value, right?

4 MR. PRINCI: Objection as to
5 form.

6 A. I don't think it was that much.

7 Q. No. And they didn't purchase
8 through credit bid the assets secured by a
9 revolver, right?

10 A. No. In the end we did a
11 different structure. Those were assets
12 that went to -- they did provide -- I'm
13 sorry, they did provide a revolver as part
14 of the facility. They just didn't
15 purchase the assets necessarily.

16 Q. Now, did Mr. Marano indicate
17 around this point in time that he thought
18 \$2 billion was required as the headline
19 number to resolve this problem?

20 A. I'm sorry, I didn't hear you.

21 Q. Did Mr. Marano indicate to you
22 that he thought at around this point in
23 time April of 2012 that he thought
24 \$2 billion was the headline number that
25 the settlement needed to have in order to

1 JOHN MACK

2 have credibility?

3 A. I don't think I would
4 characterize it that way but I do believe
5 that he said, I know that he said
6 \$2 billion but I don't believe I would
7 characterize it that he said that's what
8 it would need to be.

9 Q. How would you characterize it?

10 A. That it would be desirable.

11 Q. And did you disagree with him?

12 A. No. I didn't disagree with him.

13 Q. Why did you agree with a
14 settlement that was worth less than half
15 that amount?

16 A. Well, I didn't -- just because I
17 didn't disagree with him doesn't mean I
18 don't think that the number we got was the
19 fair number. I think -- I think his
20 number was -- could also be deemed to be
21 fair. But I'm not saying that that was
22 the only number that it could be.

23 Q. Okay. There's a discussion down
24 here that the reps and warranties claims
25 were estimated at 4.1 billion. Do you see

1 JOHN MACK

2 A. No, I don't recall.

3 Q. Do you know why Marano would
4 feel that he would need an explanation as
5 to what the amount was at that point in
6 time?

7 MR. PRINCI: Objection as to
8 form. Lack of foundation.

9 A. No.

10 Q. Let's go to exhibit, next
11 exhibit which is exhibit --

12 A. 105?

13 Q. Yes.

14 (9019 Exhibit 105, two e-mails,
15 Bates ALLY 0141967, marked for
16 identification, as of this date.)

17 A. Uh-hum.

18 Q. It's an e-mail, two e-mails the
19 top one is from Dan Soto dated May 8,
20 2012. The bottom one is from Jeff Brown
21 dated May 8, 2012. And I want to focus on
22 the penultimate paragraph of the e-mail,
23 of the bottom e-mail from Jeff Brown. It
24 says "Also I think, even as Mike once
25 shared to you and Jim, originally ResCap

1 JOHN MACK

2 presented an 8 or \$9 billion claim against
3 Ally that is now totally gone."

4 Do you see that statement?

5 A. Yes.

6 Q. What knowledge, if any, do you
7 have of an 8 to \$9 billion claim that
8 ResCap presented to Ally?

9 A. I would have to speculate that
10 in an early meeting between MoFo and K&E,
11 that that would have been a number that we
12 presented them.

13 Q. Did MoFo -- did you ever present
14 an 8 or \$9 billion ask?

15 A. Did I? No.

16 Q. Why not?

17 MR. PRINCI: Objection as to
18 form.

19 A. These are legal matters. I'm
20 not going to discuss legal matters with
21 principals.

22 Q. Okay. So you weren't settling
23 legal claims?

24 A. No.

25 MR. PRINCI: Objection as to

1 JOHN MACK

2 Now, that's why this, the date
3 on this e-mail makes me question whether
4 this was the final.

5 Q. Okay. You approved the final
6 deal?

7 A. We approved the final deal. We
8 didn't approve any interim deals.

9 Q. There was an interim deal that
10 provided for a Holdco, eliminated your
11 release and provided for a Holdco
12 election, a potential claim of
13 \$1.7 million?

14 A. I don't recall.

15 Q. You didn't approve that deal?

16 A. I don't recall.

17 Q. Why did you approve any change
18 from the original deal that allowed ResCap
19 LLC to obtain a release?

20 MR. PRINCI: Objection as to
21 form.

22 A. Again, you are into a little bit
23 of a legal issue, and I relied on my
24 advisors with regard to the legal issues.
25 The economics didn't seem to change, to

1 JOHN MACK

2 me.

3 Q. Well, from the perspective --
4 going back to the exhibit we looked at
5 earlier, the May 9th exhibit. Can you
6 pull that up again?

7 A. May 9th?

8 Q. Yeah.

9 A. What exhibit?

10 MR. PRINCI: Which exhibit
11 number?

12 MR. MOLONEY: It's the board
13 meeting. It's Exhibit Number 95.

14 A. Okay, I have 95.

15 Q. Look at the executive summary,
16 key assumptions.

17 Do you see that?

18 A. Yes.

19

20

21

22 A. Yes.

23 Q. That's the senior unsecured
24 notes, that's the bondholders.

25 Do you understand that?

1 JOHN MACK

2 Q. Mr. Mack, I'm Harrison Denman
3 from White & Case, for the ad hoc group.

4 Earlier you mentioned that you
5 perceived your role as on behalf of the
6 consolidated group of ResCap debtors; is
7 that correct?

8 A. Correct.

9 Q. And how was that perception of
10 yours informed?

11 A. Generally speaking, I mean
12 that's -- I am an independent director,
13 that is my profession now. And I take
14 that view with all of my clients or the
15 companies that I work for, that is, I am a
16 director of the consolidated company, and
17 that is the company that I have the
18 fiduciary duty to.

19 Q. So it was based --

20 A. And that company is responsible
21 for all of its subsidiaries.

22 Q. Okay. So that conclusion was
23 not reached as the result of discussions
24 with counsel?

25 A. No. No, it's a view I hold

1 JOHN MACK

2 Q. And I don't mean to misstate any
3 of the testimony, but I think you
4 testified that you understood that this
5 essentially presented the \$8.7 billion
6 amount as a percentage of the total losses
7 based on a defect rate of 19.72 percent.

8 Is that accurate?

9 A. Yes.

10 Q. So you understood in this
11 presentation that the \$8.7 billion number
12 was derived arithmetically, essentially,
13 based upon a percentage of the total
14 estimated loss?

15 A. Yes.

16 Q. Did anybody explain to you,
17 either before or at the board meeting,
18 where that 19.72 percent defect rate came
19 from?

20 A. It's 19.72 number, as I recall,

21 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

A. 5

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:

Case No:

RESIDENTIAL CAPITAL, LLC, et. al,

12-12020 (MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF JEFFREY CANCELLIERI

New York, New York

November 14, 2012

2:03 p.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27647-B

November 14, 2012

2:03 p.m.

Deposition of JEFFREY
CANCELLIERI, held at the offices of
Kramer, Levin, Naftalis & Frankel,
1177 Avenue of the Americas, New York,
New York, pursuant to Notice, before
Erica L. Ruggieri, Registered
Professional Reporter and Notary
Public of the State of New York.

1 JEFF CANCELLIERI

2 Q. What do you mean by, "if there
3 was activity"?

4 A. The reserving logic is for
5 actual repurchase claims that have been
6 received. It's not related to a
7 litigation reserve.

8 Q. Have you ever had a role at
9 ResCap in determining reserves with
10 respect to litigated claims?

11 A. No.

12 Q. Have you ever reported to Todd
13 Kushman?

14 A. Yes.

15 Q. Todd Kushman is at Ally, is he
16 not?

17 A. Yes.

18 Q. When did you report to
19 Mr. Kushman?

20 A. November of 2011 through around
21 April of 2012.

22 Q. Did your reporting structure
23 change after April of 2012?

24 A. Yes. I currently report to Jim
25 Whitlinger.

1 JEFF CANCELLIERI

2 Q. And where is Mr. Whitlinger
3 employed?

4 A. ResCap.

5 Q. Okay. Why -- do you know why
6 your reporting structure changed in
7 April 2012?

8 A. It had to do with the bankruptcy
9 proceedings.

10 Q. What do you mean by that?

11 A. They were, as they were
12 preparing to file for bankruptcy, they
13 were rebadging employees from AFI to
14 ResCap or ResCap to AFI.

15 Q. And I apologize, if I'm slightly
16 repetitive, but just to be clear, even
17 though you were reporting to Mr. Kushman
18 between November of 2011 to April of 2012,
19 you were still employed by ResCap,
20 correct?

21 A. That's correct.

22 Q. What were your responsibilities
23 in your position, starting in November of
24 2011?

25 A. Reserving for rep and warranty

1 JEFF CANCELLIERI

2 potential risk exposure numbers that were
3 presented to Kathy Patrick by ResCap
4 increased over time?

5 MR. RAINS: Objection. Assumes
6 facts not in evidence.

7 A. I am not aware of what the
8 settlement negotiations were.

9 Q. And were you ever asked by FTI
10 or anyone at ResCap to provide any
11 additional information beyond your initial
12 submission of the 3 to \$14 billion
13 exposure range and 5 to 30 percent defect
14 rate?

15 A. Not to my knowledge, no.

16 Q. Do you have an understanding as
17 to how the 8 point -- do you have an
18 understanding today that the ultimate
19 settlement number for allowed claim in the
20 settlement number was \$8.7 billion?

21 A. I'm sorry, repeat the question.

22 Q. Do you have an understanding
23 that the ultimate number that was set
24 forth in the settlement agreement as a
25 total allowed claim was \$8.7 billion?

1 JEFF CANCELLIERI

2 A. Yes.

3 Q. Do you have an understanding as
4 to how that number was calculated?

5 A. I do not.

6 Q. Are you aware that ResCap
7 identified you as the person with the most
8 knowledge about how that number was
9 calculated?

10 A. What I provided --

11 MR. RAINS: Objection. Assumes
12 facts not in evidence.

13 A. What I provided to our legal
14 experts who were negotiating the
15 transaction was a total expected lifetime
16 loss on the 392 trusts with a general
17 range of exposure percentages to give them
18 tools during their settlement
19 negotiations. I was not part of the
20 actual settlement negotiations. That was
21 left up to the legal experts to go through
22 that process.

23 Q. So at any time during the
24 settlement negotiations did you provide to
25 anyone at FTI or ResCap your opinion as to

1 JEFF CANCELLIERI

2 discussions.

3 Q. I appreciate that. But you
4 previously testified you had discussions
5 with Kathy Patrick about her assumptions,
6 correct?

7 A. That's correct.

8 Q. Did you challenge the 22 percent
9 defect rate that Kathy Patrick was using
10 in that discussion?

11 A. I challenged all of her
12 assumptions.

13 Q. What assumptions did you
14 challenge?

15 A. I challenged their use of role
16 rates for projected defaults, which were
17 based on history. I challenged their use
18 of an average severity rate, historical
19 severity rate for future losses. And as
20 part of the discussion around how they
21 were using the Bank of America defect rate
22 I guess as some level of guide, I didn't
23 get into specifics, but the fact that it
24 was based on an adverse selection of
25 loans.

1 JEFF CANCELLIERI

2 Q. How was it based on an adverse
3 selection of loans?

4 MR. RAINS: Objection. Vague
5 and ambiguous.

6 A. Based on my discussion with her
7 she mentioned that the 36 percent that was
8 used in the Bank of America settlement was
9 provided to her based on a review that
10 Freddie Mac did of Countrywide's loans
11 based on adverse selection. Adverse
12 selection being loans that were
13 nonperforming.

14 Q. And in fact the defect rates
15 that ResCap was using was based on a
16 selection of loans that is only loans that
17 were sought to be repurchased, correct?

18 A. The defect rates were used as a
19 guide. Specific defect rates were not
20 used for any specific deals. They were
21 used as a guide to create the range which
22 was provided to our legal experts during
23 our settlement negotiations.

24 Q. I understand that it was used at
25 a guide. But you were complaining to

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JEFF CANCELLIERI

Ms. Patrick that Bank of America's defect rate was based on an adverse sample, correct?

A. I wouldn't categorize it as complaining. I was challenging.

Q. Challenging that their defect rate was based on an adverse sample, correct?

A. Challenging that it was based on an adverse sample in order to assist our legal experts to give them additional guidelines on information that they can use during their settlement negotiations.

Q. And in fact the defect rates that ResCap was using as a guide in the settlement discussions were based on only loans that were either sought to be repurchased or independently audited within ResCap, correct?

A. Can you repeat the question?

Q. And in fact the defect rates that ResCap was using as a guide in the settlement discussions were based on only loans that were either sought to be

1 JEFF CANCELLIERI

2 you've calculated, correct?

3 A. Correct.

4 Q. And that's the number that you
5 said never changed during your entire --
6 during your entire analysis, correct?

7 A. Correct.

8 Q. But Kathy Patrick calculated a
9 separate lifetime loss, correct?

10 A. Yes.

11 Q. And her loss method was
12 \$48.7 billion, correct?

13 A. Yes.

14 Q. So that number wasn't actually a
15 fixed number, was it?

16 MR. RAINS: Which number?

17 A. Which number?

18 Q. Pardon. The \$44.1 billion loss
19 was not a fixed number, was it?

20 A. My 44.1 billion was a fixed
21 number.

22 Q. And using that number, you
23 backed into a defect rate of 19.7 percent,
24 approximately, correct?

25 A. Approximately, yes.

1 JEFF CANCELLIERI

2 Q. And that was done at the
3 direction of Timothy Devine; is that
4 correct?

5 A. That appears to be correct.

6 Q. And that 19.7 approximate
7 number, that actually turned out to be
8 19.72 percent, when you got -- when you
9 don't round, correct?

10 A. I would assume so, yes. The
11 19.72 is what showed up in the board
12 presentation.

13 Q. So that same defect rate is
14 what's shown up in the board presentation,
15 correct?

16 A. Correct.

17 Q. And using -- but was the board
18 ever told that, using Kathy Patrick's
19 analysis, you could come up with a
20 17.9 percent defect rate?

21 A. Not that I'm aware of.

22 Q. Was the board ever told that a
23 two percent difference in the defect rate
24 is about a billion dollar difference?

25 A. Not that I'm aware of.

1 JEFF CANCELLIERI

2 Q. Are you aware that a two percent
3 shift in the defect rate could equal a
4 2 -- a \$2 billion difference?

5 MR. RAINS: Say that last one
6 again?

7 Q. Are you aware that a two percent
8 difference in the defect rate could amount
9 to a billion dollar difference in the
10 settlement value?

11 A. If you do the calculation, it
12 could.

13 Q. And at the meeting you --
14 pardon. At the May 9th board presentation
15 or board meeting, you, you were in
16 attendance, as you've previously
17 testified, correct?

18 A. Correct.

19 Q. And at that meeting the board
20 was only given -- was only given that
21 19.72 percent range, correct?

22 A. Correct.

23 MR. RAINS: I'm going to make a
24 belated objection, vague and
25 ambiguous. I mean we know the board

1 JEFF CANCELLIERI

2 call?

3 A. Gary Lee had asked me to talk to
4 Kathy about her specific assumptions, to
5 get an idea of their calculated numbers.

6 Q. And after that call, you relayed
7 to Gary Lee and others on the legal team
8 your concerns you had with her
9 assumptions?

10 A. Yes. I relayed to Gary Lee her
11 assumptions and potential concerns with
12 her assumptions.

13 Q. And then you were shown a second
14 ago Exhibit 60, which is the board
15 presentation from May 9th.

16 Do you recall that?

17 A. I do recall that.

18 Q. And that presentation includes
19 the 36 percent Bank of America default
20 rate?

21 Do you recall that?

22 A. It includes, yes, the baseline
23 Bank of America defect rate.

24 Q. Was the board of directors of
25 ResCap ever informed that you had raised

1 JEFF CANCELLIERI

2 concerns about using that 36 percent
3 defect rate?

4 A. I don't know.

5 Q. But no -- you don't recall from
6 that --

7 A. I don't recall from that
8 meeting.

9 Q. Nothing, there was no discussion
10 of that?

11 MR. RAINS: He says he doesn't
12 recall.

13 A. I don't recall.

14 Q. But as you previously testified,
15 that 36 percent was used as a comparison.
16 It was presented to the board as a
17 comparison to the 19.72 defect rate?

18 A. That is correct, at the
19 direction of our legal counsel.

20 MR. DOLAN: I don't have
21 anything else. Thank you,
22 Mr. Cancelliere.

23 MR. RAINS: Any other takers?

24 MR. SHEEREN: David Sheeren from
25 Gibbs & Bruns. Can we just take a

A. 6

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

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In Re: Case No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF JAMES WHITLINGER

New York, New York

November 15, 2012

9:39 a.m.

Reported by:

ERICA L. RUGGIERI, RPR

JOB NO: 27649

November 15, 2012

9:39 a.m.

Deposition of JAMES WHITLINGER,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Erica L. Ruggieri,
Registered Professional Reporter and
Notary Public of the State of New
York.

1 JAMES WHITLINGER

2 A. I don't know.

3 Q. And this e-mail has two
4 attachments, one of which is a notice of a
5 telephonic meeting of the ResCap board to
6 be held the same day at 3:00 p.m.?

7 A. Correct.

8 Q. And the second attachment is an
9 agenda for that meeting?

10 A. Yes.

11 Q. And so this e-mail and the
12 notice was informing the board that in
13 less than an hour there would be a board
14 meeting, a telephonic board meeting,
15 correct?

16 A. Yes.

17 Q. And the meeting notice tells you
18 and the other board meeting -- board
19 members, that supporting materials will be
20 distributed just before the meeting?

21 A. Yes.

22 Q. And on -- the agenda lists two
23 items, the first of which is proposed
24 legal settlement; is that correct?

25 A. That's correct.

1 JAMES WHITLINGER

2 Q. And you understand that proposed
3 legal settlement refers to a discussion of
4 the RMBS Trust Settlement Agreement?

5 A. I do today.

6 Q. Did you -- you understand that
7 today?

8 A. Yeah. It says proposed legal
9 settlement. And after looking at the
10 materials, you know, and looking at what
11 was in the materials it was regarding the
12 RMBS Trust Settlement.

13 Q. But at the time you received
14 this notice you hadn't received those two
15 other documents, Exhibit 60 and 61,
16 correct?

17 A. Correct.

18 Q. And so at the time you received
19 this e-mail with the attached agenda you
20 didn't know what the proposed legal
21 settlement referred to?

22 A. Correct. It could have been
23 multiple legal settlements.

24 Q. And the time allotted for
25 discussion during the board meeting about

1 JAMES WHITLINGER

2 that proposed legal settlement was
3 30 minutes, correct?

4 A. Correct.

5 Q. And you recall that the board
6 spent about 30 minutes discussing that
7 item on May 9th?

8 A. I don't recall how much time we
9 spent on it.

10 Q. Do you know who decided that the
11 board would hold a meeting at 3:00 on
12 Wednesday, May 9th?

13 A. I don't know.

14 Q. Generally did you know who was
15 responsible for deciding when and how
16 ResCap board meetings would be convened?

17 A. Yeah. I mean we had Tom Marano
18 or our lead counsel would, you know,
19 regularly schedule board meetings.

20 Q. When you say your lead counsel,
21 to whom are you referring?

22 A. For the case is Larren Nashelsky
23 at the time and Gary Lee as well.

24 Q. And Mr. Nashelsky and Mr. Lee
25 are outside counsel for ResCap at Morrison

1 JAMES WHITLINGER

2 & Foerster?

3 A. Yes.

4 Q. And so they would sometimes
5 schedule board meetings?

6 A. They would let us know that they
7 wanted to have a topic discussed, as well
8 as our legal counsel Tammy Hamzephour.

9 Q. And do you have any reason --
10 withdrawn.

11 Do you have any knowledge as to
12 why the board was informed about this
13 meeting less than an hour before the
14 meeting was scheduled to start?

15 A. Yeah, generally speaking, at
16 that point in time we were having multiple
17 meetings and getting updates on the status
18 of various conversations that were going
19 on with various parties.

20 Q. There was a lot of -- there were
21 a lot of things going on that the board
22 were considering during this period of
23 time?

24 A. Yes.

25 Q. Take a look at Exhibit 60,

JAMES WHITLINGER

please. Do you recognize Exhibit 60 as an e-mail that Mr. Lee or that you and the board, other board members received from Mr. Lee on May 9th, 2012, at 2:38 p.m.?

A. Yes.

Q. And Mr. Lee attached to his e-mail the supporting information for the May 9th board meeting?

A. Yes.

Q. Now, these are the only board materials that were provided to the board for the May 9th board meeting, correct?

A. Per the -- per the documents here that I'm looking at here that -- that sounds right.

Q. Do you recall whether there were any other documents that provided to the board on or before the May 9th board meeting in connection with that meeting?

A. Well, you know this topic for PLS rep and warrant and discussion, there had been many documents that the board had seen over time related to PLS, rep and warrant type topics, not necessarily a

JAMES WHITLINGER

settlement, but, generally speaking, PLS
rep and warrant, the board's seen, you
know, plenty, plenty of documents relating
to this general area of rep and warrant.

Q. Can you recall any single
document that the board had ever received
before this that pertained to an analysis
of the rep and warranty claims that were
proposed being settled with Ms. Patrick
and Talcott Franklin's clients?

A. I don't -- I don't recall.

Q. All right. The board never
received any such documents before this
day, correct?

A. I don't recall if they did or
didn't.

Q. You agree that the board had
only about 22 minutes before the 3:00
meeting to read and understand these
board -- board materials before the board
meeting was scheduled to start?

A. On a timing perspective. But
again, I would tell you that when we talk
about rep and warrant topics, the board

1 JAMES WHITLINGER

2 has had plenty of experience around this
3 discussion with our advisors, with our
4 accounting policy teams and in-house
5 counsel.

6 Q. When you say on a timing
7 perspective you agree that the board had
8 only about 22 minutes to consider this
9 before the board meeting started, right?

10 A. Yeah. That's what the timing of
11 the e-mail stated.

12 Q. And what's your understanding
13 generally of the chart attached to the
14 e-mail that's entitled 2004-2007 PLS R&W
15 analysis?

16 MR. RAINS: I'm going to have
17 to -- I apologize I'm going to stand
18 over your shoulder and look at the
19 document. We weren't given copies so
20 I'm sorry to interrupt but this is the
21 only way I can see it.

22 A. So this schedule shows the
23 ResCap issued deals and the original with
24 principal balance of the loans. And so
25 that was about \$226 billion. The current

JAMES WHITLINGER

balance of the unpaid principal balance was \$63.3 billion. It shows a percentage of loans that were delinquent and then it showed that we had had just under \$30 billion of -- of losses that were incurred on the original \$226 billion of principal. And that, you know, we believed that \$14.2 billion would be losses that would potentially be incurred in the future from this point in time. So the total lifetime losses were going to be, you know, \$44.1 billion. And essentially that equated to a 19.5 percent lifetime loss of the \$226 billion.

The next column over is, you know, Kathy Patrick's group and it showed what portion of the original 226 billion for all the same -- same buckets. And then it just has a percentage of total issued. So this is what the schedule was, that the ResCap settlement amount of \$8.7 billion was the dollar amount that -- that would agreed to be the claim on the potential losses of \$44.1 billion.

JAMES WHITLINGER

Q. What's your understanding of the items in the rows that refer to a ResCap, Lehman and Bank of America percentage defect rate?

A. Right. So the \$8.7 billion divided by \$44 billion I believe is the agreed rate of, you know, 19.7. And the Lehman claim amount in the BofA baseline I think were data points or observations that said that potentially those were rates that were in those specific deals.

Q. What are those specific deals?

A. You know, I don't -- I don't know their deals.

Q. Do you know who provided the 35 percent and 36 percent, as you called them, data points for this chart?

A. I'm not sure. I believe that Jeff Cancelliere may have helped provide information on this.

Q. Who is Jeff Cancelliere?

A. Jeff Cancelliere is a direct report of mine today. Jeff worked on the risk team and was our number cruncher,

JAMES WHITLINGER

number expert for valuing loans. And so, you know, the 226 billion, identifying those, identifying the current balance, cumulative losses that had occurred to date, you know, what projected losses could be, he would be our person that was the numbers expert on that.

Q. And was Mr. Cancelliere your direct report on May 9, 2012?

A. Somewhere in the month of, you know, somewhere in thereabouts, you know, Jeff was reappointed to -- to be a direct report of mine.

Q. And on and after the time that he was appointed as a direct report of yours you were responsible for supervising and overseeing an ensuring the accuracy of his work?

A. Can you repeat or rephrase that?

Q. Sure. Once he be- -- once he was appointed as a direct report of yours you were then responsible for supervising and ensuring the accuracy of his work?

A. Yes.

1 JAMES WHITLINGER

2 Q. And who appointed him as a
3 direct report of you?

4 A. You know, I was obviously party
5 to that conversation and Tom Marano.

6 Q. Had Mr. -- Mr. Cancelliere
7 before he was a direct report to you, was
8 he a direct report to someone who was
9 employed by AFI?

10 A. Yes. There was dotted line
11 relationships.

12 Q. And so Mr. Marano then decided
13 that Mr. Cancelliere would no longer
14 report to somebody at AFI but would now
15 report to you, correct?

16 A. Generally speaking, you know, we
17 were separating the centers of excellence
18 that had been created over time. We had
19 shared services. And so we -- there was
20 an alignment process going on in April,
21 May, maybe sooner, I don't remember the
22 exact timelines, where we made sure that
23 the shared service people were repointed
24 to ResCap for our areas.

25 Q. So it's your understanding that

1 JAMES WHITLINGER

2 Mr. Cancelliere prepared the information
3 in this chart for delivery to the board?

4 A. Again, I know that Jeff worked
5 on this type of information. I don't know
6 that he actually created this chart.

7 Q. And to the extent there's any
8 information in this chart that
9 Mr. Cancelliere provided, that was
10 misleading or mistaken, you would take
11 responsibility for his work in that
12 regard, correct?

13 MR. RAINS: Objection. Assumes
14 facts not in evidence. Calls for
15 speculation.

16 Q. You can answer.

17 MR. RAINS: You can still
18 answer.

19 A. You know -- you know, we have
20 employees that work for all of us that
21 ultimately the buck stops with me.

22 Q. Which means that if
23 Mr. Cancelliere put information in to this
24 document that was provided to the board,
25 information that was either misleading or

1 JAMES WHITLINGER

2 mistaken, you take responsibility for
3 that?

4 A. Yes.

5 Q. Now, you understand that -- that
6 Mr. Cancelliere did not independently
7 determine that there should be a
8 35 percent defect rate for the Lehman
9 claims referenced here and the 36 percent
10 defect rate for the Bank of America claims
11 referenced here, right?

12 A. Can you -- can you rephrase
13 that?

14 Q. Sure. You understand -- the
15 35 percent and 36 percent numbers here,
16 you know that those were not independently
17 determined by Mr. Cancelliere, right?

18 A. I don't know if they were or
19 they weren't.

20 Q. You understand that those
21 percentages were provided to him and
22 others at ResCap by Ms. Patrick?

23 A. I don't recall how -- how those
24 numbers were determined.

25 Q. Did you, during the May 9th

1 JAMES WHITLINGER

2 board meeting, did you or any of the board
3 members ask Mr. Cancelliere or anyone
4 where the 35 percent and 36 percent defect
5 rates came from?

6 A. I don't recall.

7 Q. No, you don't recall asking
8 that?

9 A. I don't recall.

10 Q. And would it have been important
11 to you as a board member in making
12 decisions on May 9th to know that these
13 35 percent and 36 percent defect rates
14 were provided by Kathy Patrick with whom
15 ResCap was negotiating and were not
16 independently determined by ResCap?

17 A. It's a data point.

18 Q. I understand that it's a data
19 point. But would it have been important
20 to you as a board member in making your
21 decisions on May 9th to know that the
22 35 percent and 36 percent figures came
23 from Kathy Patrick and were not
24 independently created by Mr. Cancelliere
25 or anyone at ResCap?

1 JAMES WHITLINGER

2 that or we didn't talk about it is my
3 first point. If he -- if he challenged
4 it, would I want to know that? Yes.
5 That's fine. I would want to know.

6 Q. But you didn't know that on or
7 before the May 9th board meeting?

8 A. I already answered that that I
9 don't know that we did or didn't.

10 Q. But you have no recollection of
11 that?

12 A. I have no recollection.

13 Q. Was the first time that you
14 learned that the proposed settlement
15 amount was 8.7 billion the time when you
16 received this -- this board material from
17 Mr. Lee?

18 A. Can you repeat the question?

19 Q. Sure. Did you first learn that
20 the proposed settlement amount that's in
21 the RMBS Trust Settlement Agreement was
22 \$8.7 billion when you received Exhibit 60?

23 A. Yes, that -- that -- that's my
24 recollection.

25 Q. And it's your recollection that

1 JAMES WHITLINGER

2 when the board received Exhibit 60 that's
3 the first time that the board was informed
4 as a group that the settlement amount, the
5 proposed settlement amount was
6 8.7 billion?

7 A. That's my recollection.

8 Q. Now, as of May 9, 2012, you had
9 never spoken directly with Ms. Patrick, is
10 that true?

11 A. I have never spoken with
12 Ms. Patrick.

13 Q. May I ask you to take a look at
14 Exhibit 61. Those are the board minutes
15 for May 9th.

16 A. Okay.

17 Q. And you recognize those as the
18 final minutes of the ResCap board meeting
19 from May 9, 2012, that began at 3:00?

20 A. Yes.

21 Q. And does Exhibit 61
22 accurately -- accurately reflect what
23 occurred at the meeting?

24 A. Yes. It's an -- an executive
25 summary of the -- of the meeting.

1 JAMES WHITLINGER

2 settlement were -- were good based on
3 their legal opinion.

4 Q. During the May 9th meeting were
5 you advised whether the settlement
6 agreement would release potential
7 securities law claims against ResCap and
8 its subsidiaries?

9 A. I don't -- I don't recall.

10 Q. So on May 9th did you --
11 withdrawn.

12 So on May 9th you did -- is it
13 true that you did not know whether or not
14 the settlement agreement included or
15 excluded a release for securities law
16 claims that the institutional investors
17 and their trustees could bring?

18 A. I don't recall.

19 Q. On May 9th did you believe that
20 all the rep and warranty claims that the
21 institutional investors or the trustees
22 could bring were being released against
23 ResCap and its subsidiaries?

24 A. Yes. But, you know, that they
25 would be released but there was the

1 JAMES WHITLINGER

2 MR. RAINS: Here you are
3 referring to Exhibit 60?

4 A. Yeah, I'm referring to
5 Exhibit 60. I recall Jeff Cancelliere
6 talking through those numbers.

7 Q. When you say those numbers, what
8 numbers are you referring to, the numbers
9 on the chart in Exhibit 60?

10 A. The original balance, the
11 current balance, the projected lifetime
12 losses, et cetera.

13 Q. Do you recall anything that he
14 explained in connection with the rows that
15 pertain to the 19.72 percent, the
16 35 percent and the 36 percent defect rate?

17 MR. RAINS: Objection. Asked
18 and answered.

19 Go ahead.

20 A. I know that we talked about the
21 \$8.7 billion and I don't know that it was
22 Jeff Cancelliere or somebody from -- Gary,
23 you know, Gary or Tammy Hamzephour. But
24 that the \$8.7 billion represented an
25 agreed rate, if you will, of about

1 JAMES WHITLINGER

2 19.7 percent based on the lifetime losses
3 that we had put forth.

4 Q. My question was you don't recall
5 Mr. Cancelliere specifically discussing
6 any of these percentages in connection
7 with the spread- -- in connection with the
8 defect rates, right?

9 MR. RAINS: Objection. Asked
10 and answered.

11 A. I don't recall.

12 Q. In the paragraph after that
13 there's a reference in the first sentence
14 to Mr. Renzi reviewing and discussing the
15 key assumptions in the preliminary
16 economic recovery analysis of preliminary
17 agreements reached with certain
18 constituencies. This is an exhibit -- I'm
19 sorry, I have gone back to Exhibit 61.

20 MR. RAINS: I know. Focus on
21 this sentence first, okay. Mr. Renzi.

22 A. Yes.

23 Q. What is your understanding of
24 that sentence?

25 MR. RAINS: Objection. The

1 JAMES WHITLINGER

2 Q. Right. So the parties --
3 withdrawn.

4 Go ahead. I didn't mean to
5 interrupt you.

6 A. The ResCap settlement amount is
7 that that 19.72 is that calculation.

8 Q. So it's your understanding that
9 the -- the 19.72 percent was derived by
10 taking the \$8.7 billion settlement amount
11 and dividing it by the estimated lifetime
12 loss?

13 A. That's my understanding, yes.

14 Q. It was -- it was not derived by
15 ResCap independently determining that
16 19.72 percent was the, was a valid or a
17 reasonable defect rate to be applied to
18 the settlement, correct?

19 MR. RAINS: Objection.

20 Misstates his testimony.

21 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

And that there was a

1 JAMES WHITLINGER

2 takes into consideration the litigation
3 defenses and the other litigation issues
4 that you just testified about?

5 MR. RAINS: Objection. Asked
6 and answered.

7 A. Again, I don't know how to
8 answer your question any differently than
9 I have -- I have answered before.

10 Q. Did the board consider or get
11 any information about the specific
12 litigation defenses against these rep and
13 warranty claims?

14 A. I -- I don't recall.

15 Q. Do you recall whether or not the
16 board was given any information about
17 whether or not there were any statutes of
18 limitation that might bar some of
19 Ms. Patrick's clients purported claims?

20 A. If -- if you're -- are you
21 asking me in this -- in the May 9th, if we
22 talked about statute of limitations, I
23 don't recall. I know that we have always
24 talked about statute of limitations when
25 talking about rep and warrant claims.

1 JAMES WHITLINGER

2 Q. But you had no recollection of a
3 discussion about statute of limitations
4 during the May 9th meeting?

5 A. I don't recall.

6 Q. Is it your understanding that
7 just because there's a loss associated
8 with the mortgage that is considered a
9 defect but that doesn't necessarily mean
10 that ResCap or its affiliates are liable
11 for any or all of the loss?

12 A. Since you used the word "liable"
13 I'm going to again defer to our -- our
14 counsel. Lawyers determine liability.

15 Q. So was it your understanding on
16 May 9th -- withdrawn.

17 Did anyone provide the board on
18 May 9th with an analysis of how much it
19 might cost to litigate the claims
20 Ms. Patrick was -- was asserting as
21 compared to settling the claims around May
22 of 2012?

23 A. Can you repeat the first part of
24 the question?

25 Q. Sure. Did anyone advise or

1 JAMES WHITLINGER

2 say we are in or we are out, right?

3 MR. RAINS: Objection. Calls
4 for a legal conclusion.

5 A. I -- I would rely on Tammy
6 Hamzephour for that.

7 Q. As you sit here today, if the
8 trustee in a wrapped deal opts in to the
9 settlement, what is your understanding of
10 what would happen to any other claims with
11 the monoline for that wrapped deal would
12 have?

13 MR. RAINS: Objection. Calls
14 for a legal conclusion.

15 A. I'm going to defer you to Tammy.
16 Those are good questions for Tammy
17 Hamzephour.

18 Q. I want your understanding,
19 Mr. Whitlinger. I understand you are a
20 lay person. I want your understanding.

21 MR. RAINS: Objection. Calls
22 for a legal conclusion.

23 Q. I'd still like your
24 understanding. Mr. Rains can object on
25 that grounds but it's not a valid

1 JAMES WHITLINGER

2 objection that prevents you from answering
3 the question.

4 MR. RAINS: It's a valid
5 objection.

6 Q. There's no instruction not to
7 answer it. So you can answer the
8 question.

9 A. Can you repeat the question?
10 I'm sorry.

11 Q. Sure. In the context of a
12 wrapped deal, if the trustee from that
13 wrapped deal elects to opt into this
14 settlement, what effect, if any, would the
15 trustee's decision to opt into the
16 settlement agreement have on the monoline
17 from that wrapped deal's claims against
18 ResCap and its affiliates?

19 MR. RAINS: Objection. Vague
20 and ambiguous. And it calls for a
21 legal conclusion.

22 Go ahead and answer it.

23 A. I don't know the answer, the
24 specific answer to that question.

25 Q. Did you know the answer to that

A. 7

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----x

In Re:	Case No.
RESIDENTIAL CAPITAL, LLC, et. al,	12-12020 (MG)
Debtors.	

-----x

DEPOSITION OF JEFFREY A. LIPPS

New York, New York

November 19, 2012

10:13 a.m.

Reported by:
JENNIFER OCAMPO-GUZMAN, CRR, CLR
JOB NO: 27971

November 15, 2012

10:13 a.m.

Deposition of JEFFREY A. LIPPS,
held at the offices of Kramer, Levin,
Naftalis & Frankel, 1177 Avenue of the
Americas, New York, New York, pursuant
to Notice, before Jennifer
Ocampo-Guzman, a Certified Real-Time
Shorthand Reporter and Notary Public of
the State of New York.

1 Lipps

2 those suits in which affiliated nondebtor
3 entities were named.

4 Q. Are there any suits filed against
5 the debtors --

6 MR. BENTLEY: Let me start again.

7 Q. Have any suits been filed against
8 the debtors by RMBS trustees?

9 A. Prepetition?

10 Q. Correct.

11 A. I don't -- I don't believe there
12 were any suits in which a trustee was the
13 plaintiff.

14 Q. And just so we're clear, no trustee
15 suits have been filed against the debtors
16 post petition, have they?

17 A. I think that would violate the
18 automatic stay.

19 Q. That's fine.

20 A. I just wanted precision in your
21 questioning. Sorry.

22 Q. Now, the principles that govern
23 monoline suits differ, in some respects, from
24 the principles that govern suits by RMBS
25 trustees?

1 Lipps

2 filled in. But I don't know whether the
3 amount was ever filled in while I was aware
4 of it.

5 I then went off on other projects.

6 MR. RAINS: The question was
7 conversations.

8 A. Well, the conversations would only
9 be in the context of a draft agreement.

10 Q. Were you at any point asked to give
11 any advice, in connection with the potential
12 settlement with Ms. Patrick?

13 A. I was not.

14 Q. Did you ever at any point give any
15 advice in that regard?

16 A. Well, I've offered an opinion here
17 as to whether I think the settlement is fair
18 and reasonable.

19 Q. Let me try again.

20 At any time before the execution of
21 that settlement, did you give any advice to
22 anybody about it?

23 A. No. As I told you, we weren't
24 involved in negotiations. We were not
25 involved in any presentations to the board.

1 Lipps

2 Q. Or giving advice to anybody?

3 A. I didn't give advice to anybody
4 about the settlement.

5 Q. At either the debtors or at Ally?

6 A. I had no discussions with Ally
7 about the situation we're talking about right
8 now.

9 Q. When did you first begin to
10 consider the issues addressed in your
11 settlement declaration?

12 A. You know, I've thought about that,
13 because I knew you were going to go ask me
14 that. And I seem to recall that I had been
15 asked by Morrison & Foerster to do the
16 analysis that is reflected in my supplemental
17 declaration sometime maybe in August, I want
18 to say, just because I think there was a
19 deadline that was then extended to the end of
20 September.

21 And so I would have had some early
22 first discussion about this exercise, and I
23 want to say it was sometime around August;
24 but with the schedule then changed, I started
25 working on it over, you know, the course

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Lipps

leading up to when it was filed.

MR. BENTLEY: I assume we are going
to break for lunch. This is probably a
good time, because I'm between topics.

Should we take a brief break for
lunch?

MR. RAINS: Only come back at
1 o'clock.

MR. BENTLEY: It's up to you.

MR. RAINS: Well, less than that.
What do you need?

MR. BENTLEY: Should we take
20 minutes?

MR. RAINS: Good. Fantastic.

(Lunch recess taken at 12:25 p.m.)

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Lipps

be a lot quicker and more efficient if
you listen to my question and answer the
question I'm asking.

MR. RAINS: Sir, the problem is
entirely with the questions and not with
you, you are doing fine.

Ask a new question.

Q. Did you make any attempt to
quantify the rate of breaches in the loans
covered by the settlement?

A. Yes. And what I did was I looked
at, from my experience in litigating these
claims, which included claims that were in
this settlement, trusts that were in this
settlement, I knew firsthand that there were
assertions that had been made of breach rates
at 80 to 90, even approaching 100 percent,
I'm somewhat bound by confidentiality because
the litigation was in MBIA, for example, had
a confidentiality order and there were some
preliminary expert report -- well, not
preliminary -- there were expert reports that
were submitted that had much information
about what the plaintiff was contending in

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Lipps

terms of the percentages of loans that were
subject to material breaches.

So, yes, I did quantify that in my
mind, because that was the upper end of the
exposure. If they were right and if a
plaintiff is right, and this thing went to
litigation and the projected losses are 45
billion and the breach rate is 100 percent,
then that's \$45 billion worth of exposure.

Q. So this was the plaintiff's
position, correct? MBIA's position?

A. Right.

Q. Now, you had your own view, didn't
you, which you discuss in paragraph 120 of
your supplemental declaration?

MR. RAINS: Take a moment to read
paragraph 120 please.

A. I wrote paragraph 120.

MR. RAINS: And you should look at
121 as well.

MR. BENTLEY: Darryl, you don't
need to coach the witness. He doesn't
need your help and it's improper and you
know that.

1 Lipps

2 whether or not 8.7 billion was a fair and
3 reasonable resolution of that exposure.

4 Q. In reaching your conclusion, I take
5 it, you considered a number of disputed legal
6 issues?

7 A. I did.

8 Q. And you identified in your
9 supplemental declaration the principal legal
10 issues you considered, correct?

11 A. I wrote extensively on the various
12 issues that I took into account.

13 Q. You certainly did.

14 Did you assign percentages to the
15 potential outcomes on any of these issues?

16 A. I don't think, I don't think that
17 would have been meaningful to do that,
18 because I don't think any of those were a
19 legal issue that would be dispositive on the
20 entirety of the settlement in determining
21 whether or not it was fair and reasonable.

22 Q. So is the simple answer to my
23 question you did not assign any such
24 percentages?

25 A. Well, I weighed the importance of

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Lipps
the legal issue in my own mind to the case,
and as I said, I didn't conclude any of them
was dispositive, but in combination, they
created the legal environment within which I
evaluated the settlement.

Q. I'm not asking you about the
relative importance of different issues. I'm
asking you about your assessment of different
outcomes.

Did you assign percentages to any
potential outcomes on these disputed legal
issues?

A. Are we back to what you called
litigation risk analysis?

Q. It's sort of like that.

A. I did not engage in that, no.

Q. You didn't assign any percentages
to any possible outcomes?

A. No. If you're saying whether I
believe that I could prevail on causation at
a certain percentage or certain amount of
times, I did not do that.

Q. Did you, as part of your analysis,
merely identify disputed issues or did you

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Lipps

take into account probabilities, if not actual percentages, but probabilities of some sort as to the potential outcomes?

A. I mean I considered probabilities to the extent that I identified the issue, and then I surveyed, based on my own experience in the state of the law, what was evolving on that issue and tried to assess whether or not it was decided, for example, in a way that would allow for some certainty in evaluating that issue, or whether it was undecided, and I think on all the key issues, the state of the law was such, there were good arguments or at least arguments that had been presented and not dispositively ruled on on both sides of the issue. So assigning probabilities would have been meaningless to evaluating the reasonableness itself.

Q. So you didn't try to assign any probabilities?

A. Based on the analysis I just described, I concluded that assigning probabilities would have been meaningless.

Q. Is that true --

1 Lipps

2 the settlement, did you have an understanding
3 of what claims would be released against the
4 debtors?

5 A. I believe I testified earlier that
6 I saw the settlement agreement itself, the
7 release language which discussed claims that
8 were subject to the release as a result of
9 the settlement, and I believe there was a
10 provision or two that made it clear certain
11 claims were not being settled.

12 Q. And in addition to your review of
13 the settlement agreement, did any
14 representative of the debtors tell you to
15 assume that certain claims would be released?

16 A. In connection with this assignment?

17 Q. Yes.

18 A. I looked at the executed and
19 submitted settlement agreement.

20 Q. And did you seek any advice from
21 anyone representing the debtors or anyone
22 else as to what would be included in the
23 claims that were being released under the
24 settlement agreement?

25 A. I read the settlement agreement and

A. 8

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re: Cae No:

RESIDENTIAL CAPITAL, LLC, et. al, 12-12020 (MG)

Debtors.

-----x

VIDEOTAPE DEPOSITION OF TIMOTHY DEVINE

New York, New York

November 19, 2012

10:17 a.m.

Reported by:
ERICA L. RUGGIERI, RPR
JOB NO: 27973

November 19, 2012

10:17 a.m.

Videotape Deposition of TIMOTHY
DEVINE, held at the offices of Kramer,
Levin, Naftalis & Frankel, 1177 Avenue
of the Americas, New York, New York,
pursuant to Notice, before Erica L.
Ruggieri, Registered Professional
Reporter and Notary Public of the
State of New York.

1 TIMOTHY DEVINE

2 was forward -- it looks like she was
3 forwarding something to Talcott Franklin.
4 I -- I don't see an exhibit attached to
5 the e-mails here.

6 Q. Looking at the e-mail at the
7 bottom of the first page from Mr. Franklin
8 to you on December 23, 2011, you received
9 that e-mail?

10 A. It looks like I did.

11 Q. And it related to a tolling
12 agreement, correct?

13 A. The subject line is FWD: Tolling
14 Agreement.

15 Q. Mr. Franklin says "Here it is.
16 Added agreement date, fixes spelling on
17 company and accepted your changes. I will
18 get my client to sign."

19 Does that refresh your
20 recollection that you had received a draft
21 tolling agreement and had made some
22 changes to it?

23 A. I don't remember that in
24 particular.

25 Q. Weren't you the one who was

1 TIMOTHY DEVINE
2 coordinating the discussion with
3 Mr. Franklin much as you were with
4 Ms. Patrick?

5 MR. BRYAN: Objection to form.

6 MR. PRINCI: Objection to form.

7 A. I -- I did correspond with and
8 communicate with Talcott Franklin on
9 behalf of the -- the ResCap clients, yes.

10 Q. In the last e-mail in this
11 chain, which appears at the top of the
12 exhibit, the e-mail is from you to
13 Mr. Franklin on January 6, 2012.

14 Do you see that?

15 A. Yes.

16 Q. And you sent that e-mail, didn't
17 you?

18 A. It looks like I did.

19 Q. And in that e-mail you suggested
20 dates for a meeting with Mr. Franklin,
21 correct?

22 A. That's what it looks like.

23 Q. Did you thereafter schedule a
24 meeting with Mr. Franklin?

25 A. I believe a meeting was

1 TIMOTHY DEVINE

2 period ended March 31, 2012. But I -- but
3 I'm in no position to authenticate that
4 this document is what the front page of it
5 indicates it is. That's not in my job.

6 Q. It's already been authenticated,
7 Mr. Devine. You saw the 10-Q at the time
8 it was filed?

9 A. I can't say I saw the 10-Q. I
10 probably saw parts of it.

11 Q. Did you participate in its
12 preparation?

13 A. I gave advice to the client in
14 connection with its preparation.

15 Q. The 10-Q was filed on April 27,
16 2012, right?

17 A. I don't know.

18 Q. Take a look at page 73.

19 A. Okay.

20 Q. And directing your attention to
21 the heading Potential Losses, Litigation
22 Repurchase Obligations and Related Claims.
23 Do you see that?

24 A. Yes.

25 Q. Did you participate in the

1 TIMOTHY DEVINE

2 preparation of any of the material under
3 this heading?

4 A. Yes.

5 Q. The paragraphs under that
6 heading, until you get to the number 25
7 that says Subsequent Events, up until
8 that, those are part of note 24, which
9 begins on page 66, correct?

10 A. It may be a copying issue but I
11 have a blank page at page 66.

12 Q. Okay. On the other side of it.
13 On the other side of what appears on this
14 copy of the exhibit to be a blank, you see
15 the notes? This is all part of note 24,
16 right, that runs from that page, and it
17 doesn't have -- it's a copying error, the
18 66 which is on the back. It runs from
19 there to page 73. Can we agree on that?

20 A. I -- I -- what are we agreeing
21 on, sorry?

22 Q. That note 24 -- let's -- let's
23 do it this way. That the material on page
24 73 up until you get to the note 25 begins
25 on the page following page number 65 in

1 TIMOTHY DEVINE

2 of a defect rate of a nonloan level for
3 those populations.

4 Q. Okay. And the next line under
5 Additional Items says "Potential
6 investor/securities litigation." Do you
7 see that?

8 A. Yes, I see it.

9 Q. Is the amount shown for that
10 item \$400 million, the estimate of
11 exposure for securities fraud claims at
12 that point?

13 A. No.

14 Q. Okay. What does it represent?

15 A. As I sit here today, my memory
16 is that it represents the estimated top
17 end of the range of reasonably possible
18 losses for ResCap over time related to
19 litigation and -- repurchase obligation of
20 related claims. Meaning, as I understand,
21 that would have been subject to certain
22 stresses beyond what the estimated
23 exposure would have been.

24 Q. Mr. Devine, I was only focusing
25 on the line that says "Potential

1 TIMOTHY DEVINE

2 investor/securities litigation." And
3 there's a \$400 million number next to
4 that. Wasn't that some estimate of the
5 possible or reasonably possible range of
6 loss for securities litigation?

7 MR. BRYAN: Object to form.

8 A. Yeah. Well, there's a lot of
9 detail behind that line. And as I sit
10 here today, I just can't remember the
11 detail. But as I recall, that would have
12 been a number subject to a variety of
13 stresses that were imposed on the process
14 from outside of this sort of legal
15 advisory function.

16 Q. Right. Okay.

17 A. That's the more complete answer.

18 Q. Let me show you what's been
19 marked previously as Exhibit 83.

20 A. Thank you.

21 Q. Which is an e-mail chain on May
22 4, 2012. There are two e-mails in this
23 exhibit. Did you receive the one from
24 Mr. Lee on May 4?

25 A. Yeah, it looks like I did. Yes.

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2 of the conversation, at least from my
3 perspective in the deal.

4 Q. Mr. Devine, given what you have
5 claimed is your limited expertise, why
6 were you injecting yourself into the
7 discussion on these matters? Why didn't
8 you just let Mr. Schrock and Mr. Lee hash
9 it out?

10 MR. BRYAN: Objection as to
11 form.

12 A. I was driving a deal to
13 conclusion.

14 Q. What deal?

15 A. The deal that is represented in
16 gross by the resolution between the ResCap
17 estate and the RMBS claimants, both the
18 Kathy Patrick and Talcott Franklin in the
19 one sense and also the tripartite
20 agreement between Ally, the ResCap
21 entities and the claimants. And I thought
22 it was a good deal and I still to this day
23 think it's a good deal. And I saw that to
24 my mind anyway the essential elements of a
25 deal had been worked out that were

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2 favorable and fair to all concerned and I
3 wanted to get the deal done as I
4 understood we were on a certain timeline.

5 Q. Looking at the top e-mail in the
6 chain from Mr. Lee to yourself, among
7 others, at 10:54 a.m. on May 9th, did you
8 receive that e-mail?

9 A. It looks like I did, yes.

10 Q. And Mr. Lee wrote, "We will be
11 seeking ResCap board approval today. Does
12 Ally's board need to approve as it is
13 signing the PSA and ResCap is agreeing to
14 settle a claim in excess of 25 million,
15 which requires Ally approval under Ally's
16 governance framework. Please let us
17 know."

18 Did AFI's board need to approve?

19 A. I don't know.

20 Q. Did Mr. Lee, to your knowledge,
21 receive a response to his inquiry?

22 A. I don't know.

23 Q. Does Mr. Lee's reference to the
24 ResCap board -- his reference to seeking
25 ResCap board approval today, meaning

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2 their claims?

3 MR. BRYAN: Object to form. I
4 knew -- I certainly knew that the
5 monolines were not a signatory party
6 to the settlement. But it was my
7 understanding that the claims that
8 they would or could enunciate in
9 connection with the securities subject
10 of the settlement would be included
11 within the scope of the allowed claim.

12 Q. You said, "And we can define
13 securities claims narrowly." What do you
14 mean by that?

15 A. What I meant by securities
16 claims was claims brought by securities
17 holders on traditional federal securities
18 law or state blue sky or the closely
19 Allied state common law fraud claims that
20 would be characterized typically as a
21 securities based claim.

22 Q. A bit further down in your
23 e-mail you said "The circle is squared at
24 the plan. KP can only get us the
25 everything but securities settlement

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2 release because that is the full extent of
3 her representation. She has been clear
4 about that. Same as in her" BofA -- "B of
5 New York Mellon work, etc."

6 Do you see that?

7 A. Yes, I do see that.

8 Q. And then you said "But notice,
9 though her clients don't release
10 securities claims, they sign plan support
11 agreements and the plan includes very
12 simple comprehensive releases, which of
13 course include third-party release of all
14 claims which of course includes securities
15 claims. Presto. So while she can't
16 represent parties in giving up their
17 securities claims, clients face a choice,
18 either sign up with the settlement to make
19 sure your trust receives monies under the
20 waterfall in which case you need to sign
21 the plan support agreement and support the
22 plan. And the plan wipes out all their
23 claims of any sort. This is the beauty of
24 it."

25 Do you see that?

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2 A. I see that.

3 Q. So you were explaining how
4 execution of the plan support agreement
5 achieved releases of securities claims
6 even if the settlement agreement itself
7 did not, correct?

8 A. What I was explaining is that in
9 signing up for the settlement agreement
10 between ResCap and -- with ResCap those
11 parties were committing to sign a plan
12 support agreement simultaneously, which to
13 my understanding represented their
14 valuation of the securities claims they
15 were giving up and therefore they were
16 supporting a plan which would include
17 release of securities claims against the
18 debtor and release of securities claims,
19 such as they might be, against Ally
20 Financial.

21 Q. And you thought that was pretty
22 clever, didn't you?

23 MR. BRYAN: Object to form.

24 MR. PRINCI: Objection as to
25 form.

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2 going on at that time and I have no idea
3 whether there were any intervening e-mails
4 between me and Jamie that were responsive
5 to this one before I received this.

6 Q. Whatever, Mr. Devine, did you
7 receive the e-mail that Ms. Levitt sent at
8 1:16 a.m. on May 11th?

9 A. Looks like I did.

10 MR. KAUFMAN: Let's mark as
11 Exhibit 154 another e-mail chain, this
12 one on May 12, 2012.

13 (9019 Exhibit 154, e-mail chain
14 dated May 12, 2012, marked for
15 identification, as of this date.)

16 Q. Looking at the first e-mail in
17 the chain, which begins at the bottom of
18 the exhibit and continues over to the next
19 page. Did you send that e-mail to
20 Ms. Levitt, Mr. Lee, Mr. Ornstein and
21 Mr. Ruckdaschel at 4:22 p.m. on May 12th?

22 A. It looks like I did.

23 Q. The subject of your e-mail was
24 the question, "Has Talcott Franklin signed
25 on without reservation to support the

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2 plan, including broad third-party release
3 of all claims against Ally, etc.,
4 including securities claims." Right?

5 A. That's what the subject line is.

6 Q. And did you receive Mr. Lee's
7 e-mail at 4:26 p.m. in response to that
8 e-mail?

9 A. I see that Gary Lee sent an
10 e-mail to pretty much the same group of
11 people at 4:26.

12 Q. And you received that e-mail
13 from Mr. Lee, didn't you?

14 A. That's what it looks like.

15 Q. Okay. And Mr. Lee said, "It's
16 complicated." And that, "We sent Talcott
17 the agreement the way we wanted it and
18 told him he couldn't really negotiate it.
19 But if KP doesn't sign, I don't know if he
20 will."

21 Do you see that?

22 A. I see that that's part of what
23 his e-mail says.

24 Q. Right. And the e-mail at the
25 top is your reply to Mr. Lee, correct?

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2 getting authority from his clients to sign
3 the plan support agreement and I was
4 indicating to him in that last sentence, I
5 can't expose Ally to any claims however
6 remote, the importance of including all
7 claims of any type in the plan support
8 agreement. And the reference to however
9 remote was with regard to the frequent and
10 consistent communication I had -- had had
11 with Talcott Franklin and with Kathy
12 Patrick, for that matter, from the
13 beginning that rep and warrant claims as
14 against Ally are -- were not viable
15 legally or factually. And that we also
16 did not believe that there was exposure to
17 Ally in the securities claims.

18 Q. That was your position. But you
19 needed the same release provisions for
20 Mr. Franklin as you had with Ms. Patrick,
21 right?

22 MR. PRINCI: Objection as to
23 form.

24 A. When you say I needed them, what
25 did you mean.

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2 Q. But under the terms of
3 settlement agreement the trusts are
4 presented with the option to opt in or opt
5 out, right?

6 A. Well, I can't profess to have an
7 encyclopedic memory of what terms, what
8 the terms in the agreement indicate with
9 regard to the options that the trusts
10 faced. I just don't.

11 Q. Let's go back to your
12 understanding of the monolines for a
13 second. As you sit here today, are you
14 aware of anything in the agreement that
15 would carve the monolines claims out of
16 the scope of the settlement agreement that
17 was reached between the debtors and
18 Ms. Patrick?

19 A. I'm not aware of anything that
20 would carve the monolines claims out of
21 the \$8.7 billion allowed claim.

22 MR. JURGENS: Let's scroll to --
23 we have a hard copy now. That's
24 wonderful. So we don't have to
25 scroll.

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2 (Hanging.)

3 A. Thank you.

4 Q. If you can flip to section 8.02
5 of the agreement, please.

6 A. For the record, this has
7 previously been marked as 120; is that
8 correct?

9 Q. This document has been marked
10 several times but 120 sounds right to me.

11 A. I just want a clean record.

12 Q. No. Thank you.

13 A. Section 8.02?

14 Q. Yes, please. I'll just read it
15 for you, Mr. Devine, while you were
16 flipping through. It says "Financial
17 guarantee provider rights and obligations.
18 To the extent that any third-party
19 guarantor or financial guarantee provider
20 with respect to any trust has rights or
21 obligations independent of the rights or
22 obligations of the investors, the trustees
23 or the trusts, the releases and waivers in
24 Article 7 are not intended to and shall
25 not release such rights."

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2 Do you see that?

3 A. I see that.

4 Q. As you sit here today, what is
5 your understanding of section 8.02?

6 MR. BRYAN: Object to form.

7 A. I don't -- I haven't formed an
8 understanding of that provision.

9 Q. A few moments ago you said it
10 was your understanding that the monolines
11 claims would come out of the 8.7 billion,
12 right?

13 A. That's correct.

14 Q. Can you reconcile that testimony
15 with the words we see in section 8.02?

16 A. You've asked me to pick one
17 provision out of this agreement and it
18 just feels to me unfair. It's totally out
19 of context.

20 Q. So do you have any reason to
21 believe that if we sat here on the record
22 and you sifted through the balance of that
23 agreement and looked at every single word,
24 sentence and paragraph in there, that
25 you'd find something that would be able to

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2 reconcile your testimony that the
3 monolines claims would have to come out of
4 the \$8.7 billion settlement with section
5 8.02?

6 MR. BRYAN: Objection to form.

7 A. Well, it says here and it's
8 phrased fairly carefully, "To the extent
9 that any third-party guarantor or
10 financial guarantee provider with respect
11 to any trust has rights or obligations
12 independent of the rights or obligations
13 of the investors, then the release and
14 waivers in Article 7 are not intended to
15 and shall not release."

16 By which I understand that the
17 parties didn't take a position as to
18 whether or not the financial guarantee
19 provider as subject to section 8.02 did or
20 did not have rights independent of the
21 rights or obligations of the investors,
22 the trustees or the trusts but came to
23 perhaps agreed to disagree as to whether
24 such financial guarantee providers did or
25 did not have such rights and determined

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2 that to the extent that eventually it was
3 determined that they did have such
4 independent rights that they would not be
5 covered by Article 7.

6 Q. You just used the phrase
7 "independent rights." What independent
8 rights would a monoline have? I'm just
9 looking for your understanding.

10 A. I'm not going to enunciate any
11 rights, independent rights a monoline has.
12 You asked me to reconcile section 8.02
13 with my understanding that the monolines
14 would take within the \$8.7 billion claim.

15 Q. So is it your testimony --

16 A. And I did.

17 Q. Is it your testimony then that
18 you don't believe that the monolines have
19 any rights that are independent of the
20 rights of the investors as trustees or the
21 trusts?

22 MR. BRYAN: Objection to form.

23 A. Why are you asking me what
24 rights the monolines have?

25 Q. May I have an answer to my

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2 describe as the RMBS or put back
3 litigation, and I'd include in that
4 definition both the monoline claims that
5 were in litigation and any put back claims
6 that -- that might have been asserted?

7 A. The first substantial contact I
8 had within my job duties with the mortgage
9 business was in the summer of 2010 when
10 the FHFA propounded 64 subpoenas across
11 the industry and I was asked to coordinate
12 the response to the subpoenas that were
13 issued to the company.

14 Q. Did you supervise outside
15 counsel with respect to the monoline
16 litigation either MBIA or FGIC litigation?

17 A. Have I done that?

18 Q. Yes.

19 A. Yes.

20 Q. When you were representing AFI
21 from the time of the October letter that
22 Ms. Patrick sent to the signing of the
23 settlement agreement, were you solely
24 representing AFI or were you also
25 representing ResCap during that time

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2 period from October forward?

3 A. Well, we should probably be
4 careful with regard to what you mean by
5 representing. The -- as I recall, the
6 first communication from Kathy Patrick
7 came in to Bill Solomon in his capacity as
8 general counsel of Ally Financial, Inc.
9 He responded by indicating to Ms. Patrick
10 that Ally Financial, Inc. did not have
11 exposure of the variety that she wanted to
12 talk about settling. And referred her to
13 Tammy Hamzephour, general counsel for
14 ResCap.

15 What -- my participation in
16 connection with meeting with Ms. Patrick,
17 I think Mr. Sheeren was there at the first
18 meeting in Minnesota, I don't recall
19 exactly. But in any event, I was there in
20 my capacity as chief counsel for
21 litigation for ResCap, given that
22 Ms. Patrick purported to represent clients
23 who purported to have rep and warrant
24 essentially contract claims against the
25 contracting parties, all of whom were

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2 within the ResCap structure and none of
3 whom were within the Ally structure.

4 Q. So at that time in that meeting,
5 if I understand, it took place sometime
6 between October, November, December,
7 sometime in 2011, the last quarter?

8 A. I don't recall when it took
9 place. I think we have had some testimony
10 on it today. If there's a document we
11 could refer to it.

12 Q. I'm going to try to do this
13 without -- without taking the time to go
14 back to the documents.

15 A. Okay, thank you.

16 Q. So initially you were
17 representing ResCap in what I will call
18 the Kathy Patrick negotiations with
19 respect to her claims?

20 A. Well --

21 MR. BRYAN: Objection to form.

22 A. I -- I understand that you would
23 call them negotiations. So I think that
24 term is going to end up being understood
25 in a number of different ways. What --

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2 what went on for some period of time with
3 Kathy Patrick was an exchange of
4 communications designed to understand the
5 nature of her representation, who her
6 clients were, what kind of claims they
7 were purporting to make. And so to the
8 extent that that is a prelude to or a part
9 of or a type of negotiation, yes. So for
10 a period of time I was supporting those
11 discussions in my capacity in support of
12 the ResCap entities.

13 Q. You understood that Ms. Patrick
14 was asserting that ResCap owed her clients
15 a substantial amount of money?

16 A. Yes.

17 Q. So you -- did she at some
18 point -- what was the first, her first
19 demand or her first claim that she made
20 against ResCap, do you recall?

21 A. As I sit here today, I don't
22 recall her first demand.

23 Q. Did she ask for \$10 billion?

24 A. Now, you are talking about once
25 the discussions started to take place for

1 TIMOTHY DEVINE

2 a compromise of those claims within the
3 context of a ResCap filing.

4 Q. At any point?

5 A. Yeah. So I believe that she did
6 at one point in the negotiations but now
7 this was within the context of a potential
8 ResCap filing at which time I was not
9 representing ResCap in connection with a
10 potential resolution of claims against the
11 ResCap estate.

12 Q. Okay. So if I understand your
13 testimony correctly, you initially started
14 out representing ResCap and then at some
15 point you were no longer representing
16 ResCap. Could you explain to me when your
17 role and responsibility changed?

18 A. I think you've slightly
19 misunderstood but I don't blame you. At
20 some point -- because it wasn't entirely
21 clear, right. At some point -- look, when
22 we started the discussions with Kathy
23 Patrick, I was representing the ResCap
24 entities in connection with the assertion
25 that they had -- that Kathy Patrick did

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2 represent clients who did or did not under
3 the relevant documents have contract
4 claims against ResCap. And that was
5 natural because I had been dealing with
6 that kind of assertion of claim, although
7 not by investors and trustees but rather
8 by the monolines against the ResCap
9 entities theretofore.

10 At some point ResCap began to
11 consider a Chapter 11 restructuring. I
12 did not represent ResCap at all in
13 connection with this Chapter 11
14 restructuring, unless you consider the
15 nature of our discussions according to the
16 common interest or joint defense privilege
17 in which case that's why I don't blame you
18 for misunderstanding the nature of what I
19 just talked about. But so, yes, I did
20 represent ResCap in connection with the
21 sort of bilateral claim of Kathy Patrick's
22 clients against the ResCap entities and
23 rep and warrant. Once the context of the
24 restructuring became a part of that
25 dialogue, ResCap was represented by Gary

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2 Lee of MoFo. I never represented ResCap
3 on a bankruptcy related resolution. At
4 least unless you -- as I say, I did
5 continue to advise ResCap in connection
6 with plain sort of legal analysis on rep
7 and warrant issues but not so much as
8 would be implicated in connection with the
9 filing.

10 Q. Thank you for that and let me
11 try to make sure I understand correctly.
12 To try to summarize. In the beginning of
13 from October for some period of time in
14 the initial stages that you've described
15 as essentially information gathering
16 stages, you were representing ResCap. By
17 the end, by the April and May time period
18 that we have looked at a variety of
19 e-mails by that time period you were no
20 longer representing ResCap, you would have
21 solely been representing AFI, is that
22 correct, am I bracketing the change in
23 role correctly?

24 A. No. I think you are missing one
25 part of it. But it's -- it's

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2 directionally correct. So first of all,
3 the difficulty with the word
4 "representing" given that there were no
5 pleadings in the matter, nobody appeared
6 as counsel of record, et cetera. So let's
7 for a moment agree that the term
8 "representing" is somewhat subject to a
9 variety of definitions and understandings.

10 Q. I would use representing as
11 representing in the context of the
12 negotiations. Representing a client, be
13 it AFI or ResCap, in dealing with
14 Ms. Patrick or the Talcott Franklin group
15 that came in at the end. If you
16 understand that.

17 A. Uh-hum. So there -- there were
18 certainly throughout the relevant period
19 transactions and discussions,
20 communications -- transactions meaning
21 information exchange, et cetera, between
22 the ResCap parties and Kathy Patrick on
23 the one hand or Talcott Franklin on the
24 other, which I assisted and advised ResCap
25 in accomplishing.

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2 At the same time I was
3 representing -- I was chief counsel to
4 Ally as well so of course I was advising
5 both ResCap and Ally in connection with
6 the -- the claims that Kathy Patrick
7 purported to make on behalf of those
8 clients.

9 Q. When you were representing
10 ResCap in the initial stages of this
11 discussions and negotiations with
12 Ms. Patrick, who did you report to at
13 ResCap?

14 A. I certainly included Tammy
15 Hamzephour in any discussions. She was
16 general counsel to the ResCap entities. I
17 had conversations with and gave advice to
18 and took input from a variety of business
19 clients.

20 Q. So in addition to Ms. Hamzephour
21 you spoke to other not -- not in-house
22 counsel but other business representatives
23 at ResCap?

24 A. Yes.

25 Q. Do you recall who that would be

1 TIMOTHY DEVINE

2 in the initial stages?

3 A. Sure. So but in what capacity,
4 as sort of an information source, as a --
5 as a normal business client or in sort of
6 a decision-making --

7 Q. In any capacity you were
8 representing them in the initial stages of
9 these discussions and negotiations with
10 Ms. Patrick.

11 A. I had communications with Tom
12 Marano, with Jim Whitlinger, with Jeff
13 Blashco (ph), Jeff Cancelliere. This was
14 my -- as in-house counsel I had naturally
15 the information and expertise relating to
16 the rep and warrant claims that Kathy
17 Patrick and her clients purport to make.
18 It was all contained within ResCap. That
19 was my resource base, that was my client
20 base, that's where the decision-making
21 authority with regard to whether or not to
22 engage in real settlement discussions or
23 not. That's -- that's where all that took
24 place with the ResCap client.

25 Q. Why was it decided at some point

1 TIMOTHY DEVINE

2 that you would no longer represent ResCap
3 and solely be representing AFI?

4 A. I'm going to answer your
5 question without revealing privileged
6 communications. At some point it was
7 determined that people performing
8 functions like the one I was performing,
9 which spanned across -- across the Ally,
10 the nondebtor to the debtor line, should
11 reorient so that they were aligned with
12 one or the other. And that was a process
13 that took place across the various
14 business units and functions to the extent
15 that there was any overlap.

16 Q. Do you know when that was?

17 A. With regard to my own role?

18 Q. Yes.

19 A. I don't know exactly when it
20 was. I understand you would think I would
21 have an exact date and hour. I don't.
22 But because -- the reason I don't is
23 because it's probably accurate to say that
24 in some measure I continued to be a
25 resource for the ResCap client even as

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2 they retained MoFo to represent them in
3 connection with rep and warrant and in
4 connection with rep and warrant in a
5 bankruptcy context, simply because I had a
6 great deal of experience in connection
7 with the claims that were being asserted
8 against the estate and because, as you
9 know, many of us believed that we had a
10 common interest in joint defense. And in
11 fact at some point a document was executed
12 to that effect.

13 So it's not a straight line,
14 drop dead date after which I was no longer
15 providing advice to either a client of
16 sorts or a co, sort of a party subject to
17 a common defense or joint defense
18 agreement.

19 Q. I think I understand. To your
20 knowledge, when did ResCap become
21 insolvent, and I would define that on a
22 balance sheet basis when its total assets
23 were less than its total liabilities?

24 A. I don't know.

25 MR. BRYAN: Objection.

A. 9

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Kathy D. Patrick
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713.751.5253

October 17, 2011

Via Federal Express

William B. Solomon, Jr., Esq.
General Counsel
Ally Financial Inc.
200 Renaissance Center
Detroit, Michigan 48265

Dear Mr. Solomon:

This firm represents investment advisers and holders of Residential Mortgage Backed Securities (RMBS) issued and/ or underwritten by Ally Financial Inc. and/or its affiliates ("Ally"). The aggregate outstanding balance of the 242 Ally deals in which our clients collectively hold 25% or more of the voting rights of a class in that deal, exceeds \$51 billion. The aggregate outstanding balance of the 173 Ally deals in which our clients collectively hold 50% or more of the voting rights of a class in that deal, exceeds \$36 billion.

There is widespread, readily available evidence suggesting that large numbers of mortgages securing the certificates held by our clients were sold or deposited into the RMBS pools based on false and/or fraudulent representations and warranties by the mortgage originators, sellers and/or depositors. This evidence includes, but is certainly not limited to:

- excessive early default and foreclosure rates experienced in the underlying mortgage pools;
- a loan-level analysis of Ally RMBS conducted by the Federal Housing Finance Agency (FHFA), which revealed that up to 13% of the mortgage loans in Ally RMBS breached owner-occupancy representations and warranties, and that up to 49% of the mortgage loans in Ally RMBS breached Loan-to-Value representations and warranties¹;

¹ Our clients collectively hold 25% or more of the voting rights of a class in 18 of the 21 Ally deals which FHFA analyzed.

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- MBIA's lawsuits against Ally, reporting that its loan-level analysis of various Ally RMBS showed that high numbers of mortgages in the pools were ineligible at origination²;
- detailed allegations in securities cases against Ally, which suggest widespread deficiencies in Ally's underwriting practices, including inaccurate representations and warranties regarding important loan characteristics such as borrower incomes and home appraisals³;
- substantial downgrades of the certificates by credit rating agencies; and
- Ally's own apparent acknowledgement that it is potentially liable for violations of representations and warranties in Ally RMBS, evidenced by its \$829 million reserve for repurchase liabilities as of June 30, 2011, which relates "primarily" to non-GSE exposure,⁴ as well as its statement that such liabilities are "most significant for loans originated and sold between 2004 through 2008, specifically the 2006 and 2007 vintages *that were originated and sold prior to enhanced underwriting standards and risk-mitigation actions implemented in 2008 and forward.*"⁵

In addition, there is widespread, readily available evidence suggesting that Ally, as servicer and/or master servicer of mortgage loans securing the certificates held by our clients, has failed to observe and perform the covenants and agreements imposed on it by the governing agreements, and has failed to meet its duty to prudently service those mortgage loans, including, but certainly not limited to:

- Ally's admittedly flawed and "embarrassing"⁶ mortgage loan servicing and foreclosure practices, including deficient document signing practices, leading to Ally's foreclosure suspension and review in Fall 2010;
- Ally's April 2011 consent order with the Board of Governors of the Federal Reserve System and the FDIC, which alleged that, in connection with certain

² MBIA has reported that 89% of adversely selected loans from 3 separate GMAC securitizations were not originated in material compliance with GMAC's underwriting guidelines or representations and warranties. See Complaint ¶ 6, *MBIA Ins. Co. v. GMAC Mortg., LLC*, No. 600837/2010 (N.Y. Sup. Ct.). MBIA has also reported that 93% of adversely selected loans from 5 separate RFC securitizations were not originated or acquired in material compliance with RFC's representations and warranties. See Complaint ¶ 46, *MBIA Ins. Co. v. Residential Funding Co., LLC*, No. 603552/2008 (N.Y. Sup. Ct.).

³ See, e.g., Complaint, *Mass. Mut. Life Ins. Co. v. Residential Funding Co., LLC*, No. 3:11-cv-30035 (D. Mass.).

⁴ See Ally Financial Inc.'s Second Quarter 2011 Form 10-Q at 83.

⁵ See *id.* at 81 (emphasis added).

⁶ See Dakin Campbell and Natalie Doss, *Ally Will Keep ResCap, 'Screwed Up' Using Robosigners*, BLOOMBERG NEWS, Nov. 3, 2010.

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foreclosures of loans in Ally's servicing portfolio, Ally engaged in "unsafe or unsound banking practices" because, among other reasons, Ally filed or caused to be filed in courts inaccurate affidavits, filed or caused to be filed in courts or in land record offices improperly notarized mortgage-related documents, litigated or initiated foreclosure proceedings without ensuring proper assignment and possession of promissory notes or mortgage documents, failed to devote adequate resources to foreclosure processes, failed to ensure timely, effective, and efficient communication with borrowers with respect to loss mitigation and foreclosure activities, failed to subject its foreclosure processes to adequate oversight, internal controls, policies, and procedures, and failed to sufficiently oversee third parties handling foreclosure-related services;

- ongoing investigations by state attorneys general and other government agencies into Ally's mortgage loan servicing and foreclosure-related practices;
- evidence of wholly avoidable and unnecessary servicing fees to maintain mortgaged property, which have resulted from Ally's flawed mortgage loan servicing and foreclosure practices; and
- Ally's apparent failure to notify other parties to the governing agreements of mortgage loans in the pools that violated representations and warranties at the time they were sold into the pools, and its apparent failure to enforce the sellers' obligations to cure, substitute, or repurchase such loans, as Ally is required to do under the governing agreements.

Based on this and other evidence, our clients believe that large numbers of ineligible loans were sold or deposited into, and remain in, the RMBS pools securing the certificates. Under the governing agreements, Ally has substantial repurchase liability for such loans. Our clients further believe that Ally's failure to observe and perform the covenants and agreements imposed on it by the governing agreements, and to meet its duty to prudently service those mortgages, may constitute a servicer event of default under the governing agreements.

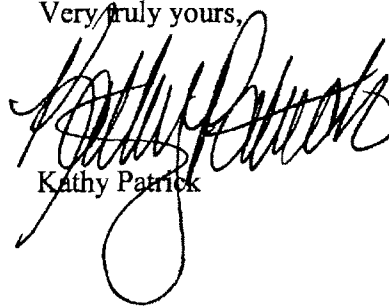
Our clients are not willing to suffer further losses resulting from ineligible loans in the pools and improper servicing of the loans in the pools, and they wish to seek a resolution of repurchase and servicing claims with Ally. As such, our clients hope and anticipate that Ally will begin a constructive dialogue with them regarding the concerns raised by this letter. If, however, Ally proves to be an obstacle to their efforts to mitigate such losses, our clients fully intend to exercise their rights under the governing agreements—including the issuance of binding instructions to Trustees—to pursue enforcement of repurchase and servicing claims against Ally.

Confidential

4

Should Ally wish to begin a constructive dialogue regarding these issues, please make appropriately senior legal and business personnel available to meet with me and various of our clients on Thursday, October 27, 2011. To arrange the details of this meeting, please contact me as soon as possible.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Patrick", written over a horizontal line.

Kathy Patrick

Confidential

A. 10

REDACTED

A. 11



William B. Solomon, Jr.
Group Vice President and General Counsel

October 21, 2011

Via Federal Express

Kathy Patrick, Esq.
Gibbs & Bruns LLP
1100 Louisiana
Suite 5300
Houston, TX 77002

Dear Ms. Patrick:

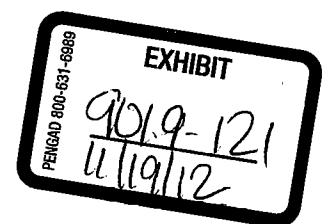
I am in receipt of your October 17, 2011 letter. None of the transactions that you describe in your letter involved Ally Financial Inc., so it would be inappropriate to engage you on the issues.

For your information, the General Counsel of Residential Funding Corporation and GMAC Mortgage is Tammy Hamzehpour, whose address is 1100 Virginia Drive, Fort Washington, Pennsylvania 19034.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. Solomon, Jr.", written in a cursive style.

200 Renaissance Center Mail Code: 482-B09-B11 Detroit, MI 48265
Phone: 313-656-6128 Fax: 313-656-6124 E-mail: william.b.solomon@ally.com



A. 12

Confidential



Kathy D. Patrick
kpatrick@gibbsbruns.com
713.751.5253

October 25, 2011

Via Federal Express

William B. Solomon, Jr., Esq.
General Counsel
Ally Financial Inc.
200 Renaissance Center
Detroit, Michigan 48265

Dear Mr. Solomon:

I am in receipt of your October 21st, 2011 letter. As you know, Ally Financial Inc. ("Ally") is the parent and 100% owner of GMAC Mortgage Group, Inc. ("GMACM"). Residential Capital, LLC ("ResCap"), in turn, is a wholly-owned subsidiary of GMACM. ResCap is the direct or indirect parent of the parties to the pooling and servicing agreements at issue, including GMAC Mortgage and Residential Funding, to which you referred in your letter.

In response to your suggestion, I will forward my October 17th, 2011 letter to Ms. Hamzehpour, who appears to be the General Counsel of Ally's Mortgage Operations, as well as the General Counsel of ResCap.

Our clients do not, however, accept your assertion that Ally Financial Inc. does not ultimately bear the liability associated with the repurchase and servicing claims described in my October 17th letter. Ally does.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathy Patrick", written over a horizontal line.

Kathy Patrick

A. 13

REDACTED

A. 14

From: Devine, Timothy
Sent: Monday, December 05, 2011 6:38 PM
To: Hamzehpour, Tammy; Hagens, David; Ruckdaschel, John
Subject: Re: Kathy Patrick

Still silence from Kathy? I had the distinct impression she was going to reach out to us.

From: Hamzehpour, Tammy
To: Devine, Timothy; Hagens, David; Ruckdaschel, John
Sent: Mon Dec 05 13:07:51 2011
Subject: RE: Kathy Patrick

Kathy's contact information is:

kpatrick@gibbsbruns.com
713-751-5253

From: Devine, Timothy
Sent: Thursday, December 01, 2011 7:59 AM
To: Hamzehpour, Tammy; Hagens, David; Ruckdaschel, John
Subject: RE: Kathy Patrick

Tammy: will you please fwd Kathy's email contact info? I will reach out to her in the next day or so to pick up the dialogue. Thanks. Tim

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Hamzehpour, Tammy
Sent: Wednesday, November 30, 2011 4:36 PM
To: Devine, Timothy; Hagens, David; Ruckdaschel, John
Subject: RE: Kathy Patrick

I've not heard anything.

From: Devine, Timothy
Sent: Wednesday, November 30, 2011 3:29 PM
To: Hamzehpour, Tammy; Hagens, David; Ruckdaschel, John
Subject: Kathy Patrick

All: as I understood it, we were going to hear from Kathy Patrick next. Am I right? Have we heard anything?

Thanks.

Tim

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

A. 15

From: Kathy D. Patrick
Sent: Monday, December 19, 2011 6:11 PM
To: Hamzehpour, Tammy; Rosten, Linda; Devine, Timothy
Cc: David Sheeren; Scott A. Humphries; Francis.Chlapowski@gs.com; Jon.Yoder@gs.com; Neena.Reddy@gs.com; BBaltich@fhlbatl.com; roshields@fhlbatl.com; paul.defrancisci@nb.com; Monica.Sherer@nb.com; Sean.Plater@tcw.com; cwoods@aegonusa.com; dmineck@aegonusa.com; rick.lebrun@pimco.com; david.flattum@pimco.com; Stephen.Venable@westernasset.com; jeffrey.kupor@invesco.com; Tim.Meehan@Americas.ING.com; marcy.cohen@americas.ing.com; paul.howell@us.ing.com; Bridget.healy@us.ing.com; rlaws@ingdirect.com; kwellman@ingdirect.com; jmccally@ttaa-cref.org; maureen_cronin@nylim.com; Ronald_Brandon@nylim.com; cnass@KoreCapital.com; LBriganti@bayernlbny.com; VDolan@bayernlbny.com; wding@metlife.com; dlarocca@metlife.com; kfinnegan@metlife.com; tshenkin@metlife.com; robert.lawrence@prudential.com; tina.smith@thrivent.com; arthur.rublin@blackrock.com; stephen.ahrens@blackrock.com; peter.vaughan@blackrock.com; sheris@bgi-group.com; miker@bgi-group.com; LaurieS@bgi-group.com; Steffen.nies@lbbw.de; frank.damerow@lbbw.de; James.Walters@commerzbank.com; Ron.Raffan@commerzbank.com; Jonathan.Banks@commerzbank.com; Simon.Bowmer@commerzbank.com; Matthew.McCabe@commerzbank.com; CPryor@ttaa-cref.org; stephanie.heller@ny.frb.org; Scott A. Humphries; Robert J. Madden; Kathy D. Patrick; David Sheeren
Subject: RE: Letter from Tim Devine
Attachments: 12-19-11 Letter to Timothy Levine - Ally.pdf

Good Evening:

A letter confirming the identities of the clients we represent is attached. Our clients are also copied on this email, to confirm that they are aware of this communication and have authorized us to act on their behalf in these discussions.

Please contact me promptly concerning the confidentiality agreement and any other preliminary matters so that we may move this matter forward.
We look forward to continuing our discussions and hope they will be productive.

Best regards,

Kathy

Kathy Patrick

Gibbs & Bruns LLP | 1100 Louisiana Suite 5300 | Houston TX 77002

713.751.5253 o. | 713.750.0903 f. | www.gibbsbruns.com

kpatrick@gibbsbruns.com

From: Hamzehpour, Tammy [mailto:Tammy.Hamzehpour@ally.com]
Sent: Monday, December 19, 2011 5:16 PM
To: Kathy D. Patrick; Rosten, Linda
Cc: Devine, Timothy; David Sheeren; Scott A. Humphries
Subject: RE: Letter from Tim Devine

Kathy,

I know Tim is traveling this evening, but I can confirm to you that we will hold your clients' identities in confidence.

Best regards,

Tammy Hamzehpour
General Counsel, Mortgage Operations
1100 Virginia Drive
Fort Washington, PA 19034
T + 215 682 1307 | M + 952 270 8470 | F + 866 572 7524 tammy.hamzehpour@gmacrfc.com
<<mailto:tammy.hamzehpour@gmacrfc.com>>

THIS MESSAGE CONTAINS INFORMATION WHICH MAY BE CONFIDENTIAL AND PRIVILEGED. UNLESS YOU ARE THE ADDRESSEE (OR AUTHORIZED TO RECEIVE FOR THE ADDRESSEE), YOU MAY NOT USE, COPY OR DISCLOSE TO ANYONE THE MESSAGE OR ANY INFORMATION CONTAINED IN THE MESSAGE OR ITS ATTACHMENTS. IF YOU HAVE RECEIVED THE MESSAGE IN ERROR, PLEASE ADVISE THE SENDER BY REPLY E-MAIL AT tammy.hamzhepour@macrhc.com AND DELETE THE MESSAGE.

From: Kathy D. Patrick [mailto:kpatrick@gibbsbruns.com]
Sent: Monday, December 19, 2011 5:48 PM
To: Rosten, Linda
Cc: Devine, Timothy; Hamzhepour, Tammy; David Sheeren; Scott A. Humphries; Kathy D. Patrick
Subject: RE: Letter from Tim Devine

Mr. Devine:

Thank you for this letter. We were awaiting Ally's execution of the confidentiality agreement, so that we could send you a formal list of our clients' names and confirmation of the holdings held by the group.
If you will kindly respond to this email confirming that you will hold our clients' identities in confidence, we will immediately respond with a letter—copied to our clients—confirming we are acting on their behalf.

Best regards,

Kathy

Kathy Patrick

Gibbs & Bruns LLP | 1100 Louisiana Suite 5300 | Houston TX 77002

713.751.5253 o. | 713.750.0903 f. | www.gibbsbruns.com

kpatrick@gibbsbruns.com

From: Rosten, Linda [mailto:Linda.Rosten@ally.com]

Sent: Monday, December 19, 2011 4:09 PM
To: Kathy D. Patrick
Cc: Devine, Timothy; Hamzehpour, Tammy; David Sheeren; Scott A. Humphries
Subject: Letter from Tim Devine

Ms. Patrick,

Attached is a letter from Tim Devine dated December 19, 2011 for your review. If you have any questions or concerns, please feel free to contact Tim directly.

Thank you.

Best regards,

Linda Rosten

Ally Financial | Legal Staff

200 Renaissance Center, MC: 482-B09-B11, Detroit, MI 48265

T +313 656 6146

F +313 656 6124 or 313 566 0930

Linda.Rosten@ally.com



Kathy D. Patrick
kpatrick@gibbsbruns.com
713.751.5253

December 19, 2011

Mr. Timothy A. Devine
Office of General Counsel
Ally
200Renaissance Center
M/C: 482-B09-B11
P.O. Box 200
Detroit, MI 48265-2000

Dear Mr. Devine:

In response to your letter of this afternoon, and in reliance on Ms. Hamzehpour's assurance that Ally will hold our clients' identities in confidence pending the execution of a confidentiality agreement, our clients in this matter are listed below:

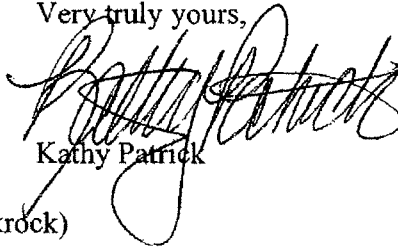
1. BlackRock Financial Management Inc. and its advisory affiliates
2. Kore Advisors, L.P.
3. Maiden Lane, LLC; Maiden Lane II, LLC; and Maiden Lane III, LLC by Federal Reserve Bank of New York, as managing member
4. Metropolitan Life Insurance Company
5. Trust Company of the West and affiliated companies controlled by The TCW Group, Inc.
6. Neuberger Berman Europe Limited
7. Pacific Investment Management Company LLC
8. Goldman Sachs Asset Management, L.P., as adviser to its funds and accounts
9. Teachers Insurance and Annuity Association of America
10. Thrivent Financial for Lutherans
11. Landesbank Baden-Württemberg
12. LBBW Asset Management (Ireland) plc, Dublin
13. ING Entities
14. New York Life Investment Management LLC, as investment manager
15. AEGON USA Investment Management LLC, authorized signatory for various AEGON affiliates
16. Bayerische Landesbank, acting through its New York Branch

December 19, 2011
Page 2

17. Prudential Investment Management, Inc.
18. Western Asset Management Company
19. Federal Home Loan Bank of Atlanta
20. Cascade Investment, LLC

We have copied representatives of each institution on this letter, so that you will be aware that they have received this confirmation that we are acting on their behalf. We trust that this confirmation is sufficient to permit Ally to move forward promptly to execute the confidentiality agreement we previously forwarded to you, so that we may move forward with more substantive discussions.

Very truly yours,



Kathy Patrick

Cc: Mr. Stephen Ahrens (Blackrock)
Mr. Cory Nass (Kore Capital)
Ms. Stephanie Heller (Federal Reserve Bank of New York)
Mr. Kevin Finnegan (MetLife)
Mr. Sean Plater (Trust Company of the West)
Mr. Paul deFrancisci (Neuberger Berman Europe, Ltd.)
Mr. Rick LeBrun (PIMCO)
Mr. Francis Chaplowski (Goldman Sachs Asset Management)
Mr. John McCally (TIAA-CREF)
Ms. Tina Smith (Thrivent Financial for Lutherans)
Mr. Frank Damerow (LBBW)
Ms. Maureen Cronin (New York Life)
Mr. Clint Woods (AEGON USA)
Ms. Lorraine Briganti (Bayern LB)
Mr. Robert Lawrence (Prudential Investment Management, Inc.)
Mr. Stephen Venable (Western Asset Management Company)
Mr. Reggie O'Shields (Federal Home Loan Bank of Atlanta)
Ms. Sheri Symonds (Cascade Investments LLC)
Ms. Tammy Hamzehpour

A. 16

From: Rosten, Linda [Linda.Rosten@ally.com]
Sent: Monday, December 19, 2011 4:09 PM
To: Kathy D. Patrick
Cc: Devine, Timothy; Hamzehpour, Tammy; David Sheeren; Scott A. Humphries
Subject: Letter from Tim Devine
Attachments: SKMBT_C360-11121916540.pdf

Ms. Patrick,

Attached is a letter from Tim Devine dated December 19, 2011 for your review. If you have any questions or concerns, please feel free to contact Tim directly.

Thank you.

Best regards,

Linda Rosten

Ally Financial | Legal Staff

200 Renaissance Center, MC: 482-B09-B11, Detroit, MI 48265

T +313 656 6146

F +313 656 6124 or 313 566 0930

Linda.Rosten@ally.com



Timothy A. Devine
Office of General Counsel
200 Renaissance Center
M/C: 482-B09-B11
P.O. Box 200
Detroit, MI 48265-2000

December 19, 2011

T + 1 313-656-3477
F + 1 313-566-0930

VIA FEDERAL EXPRESS
and E-mail

Kathy Patrick, Esq.
Gibbs & Bruns LLP
1100 Louisiana, Ste. 5300
Houston, TX 77002

Dear Kathy:

Thank you again for the candid and constructive preliminary discussion in Minneapolis. And thank you also for following up with your draft Confidentiality Agreement and Tolling Agreement.

As you know, our clients are generally inclined to pursue confidential discussions exploring possible negotiated settlements of the claims you have generally described, so long as we can design a workable process. We are confident we can do so. As we said during our preliminary discussion in Minneapolis, we will need to proceed step by step in an orderly manner to ensure such a process has best chance of success.

As a first step, during our preliminary discussions we took some notes regarding the identity of the clients referenced in your letter, and the scope of your firm's representation of them. It is very important for us to confirm your firm's representation as to each of the clients, and the scope of the respective engagements. Please understand that though we recognize the somewhat extraordinary nature of the discussions you propose, we still owe it to the clients to take care of the basics. We note, for example, that to date there has been no communication from you cc'ing your clients. We note also, again for example, that the draft Agreements you have forwarded nowhere identify much less provide for execution by your clients as parties to the agreements.

We may have some flexibility with regard to the type and extent of written confirmation we require of the firm's engagement by the clients you identified at our meeting and are willing to consider your suggestions in this regard.

Very truly yours,

A handwritten signature in black ink, appearing to read 'T. Devine', is written over a faint, larger signature.

Timothy A. Devine
Chief Counsel - Litigation

cc: Scott Humphries
David Sheeren
Tammy Hamzehpour

A. 17

Outlook E-mail

From: Devine, Timothy
Sent: 1/9/2012 6:45:27 PM
To: Kathy D. Patrick; 'dsheeren@gibbsbruns.com'
Cc: Hamzehpour, Tammy; Ruckdaschel, John; Hagens, David
Subject: RE: Confi and Tolling Agreement
Attachments: Tolling Gibbs Brun ResCap (5).docx; Confidentiality Agreement Gibbs Brun Clients ResCap (3).docx

CONFIDENTIAL
FOR SETTLEMENT PURPOSES ONLY

Kathy and David:

Please see the attached markups of the draft Confi and Tolling Agreement you had sent over.

The rationale for some of the markups will be self-evident. There are some I would like to walk through with you at your convenience.

Among the points we're addressing by markups to the Confi are potential that the talks may need to be disclosed in public financial filings, as apparently some banks may have done. Also that we may contractually be required to disclose them if we are approached by a Trustee or other claimant asserting standing to challenge us on the applicable contract. Finally, should we all proceed to a production of loan files or similar records containing customer or investor information, we may need to enter additional agreements protecting the PII or other info more expressly.

Biggest point in the markups to the draft Tolling Agreement I think is that we ought to have the particular interests of your clients identified as against particular deals, so that all parties involved have a clear and unambiguous meeting of the minds as to what particular claims are covered by the agreements and the discussions. Also need to address risk that other parties or counsel may bring claims or inquiries relating to the same investments which are the basis of the interests under discussion here – whether such claims come for example from a monoline, a trustee, a government agent or agency of any sort, etc. – which of course we would need to address and/or defend.

I'm out of town tomorrow, back in the office the rest of the week. Happy to discuss, to answer questions.

Looking forward to next steps.

Thanks.

Tim

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Devine, Timothy
Sent: Wednesday, December 14, 2011 9:46 PM
To: dsheeren@gibbsbruns.com
Cc: Hamzehpour, Tammy; Ruckdaschel, John; Hagens, David
Subject: FW: Confi and Tolling Agreement

David:

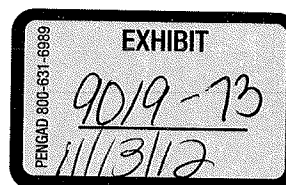
Tammy has asked me to follow up on your email. I will do so shortly. Will you please send me email contact info for Kathy and Scott?

Thanks.

Tim

Timothy A. Devine

CONFIDENTIAL-PROFESSIONALS' EYES ONLY



RC-9019_00089373

Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: David Sheeren [mailto:dsheeren@gibbsbruns.com]
Sent: Wednesday, December 07, 2011 11:24 AM
To: Hamzehpour, Tammy
Cc: Kathy D. Patrick; Scott A. Humphries
Subject: Confi and Tolling Agreement

Tammy,

Attached for your review, please find a draft Confidentiality Agreement and a draft Tolling Agreement.

Best regards,
David

David Sheeren
Gibbs & Bruns LLP
1100 Louisiana, Suite 5300
Houston, Texas 77002
713.751.5207 (o)
713.459.6278 (c)

Tolling Agreement

WHEREAS, Residential Capital, LLC, and various of its subsidiaries and affiliates, including, without limitation, GMAC Mortgage, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Asset Securities Corp., Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., and Homecomings Financials, LLC (collectively, "ResCap Mortgage Companies"), are parties to Pooling and Servicing Agreements, or other similar agreements ("PSAs"), governing Residential Mortgage Backed Securities issued and/or underwritten by ResCap Mortgage Companies ("RMBS"); and

WHEREAS, in a letter dated October 17, 2011, Gibbs & Bruns LLP, on behalf of its clients ("Gibbs and Bruns"), notified Ally Financial Inc. that its clients held (or managed accounts which held) 25% of the voting rights of a class in 242 RMBS, which are identified in Exhibit A hereto; and

WHEREAS, in the October 17 letter, Gibbs & Bruns notified Ally Financial Inc. that its clients believe that large numbers of mortgage loans which violate representations and warranties were sold or deposited into, and remain in, the RMBS pools, and that, under the PSAs, Ally Financial Inc. and its affiliates have substantial repurchase liability for such loans ("Repurchase Claims"); and

WHEREAS, in the October 17 letter, Gibbs & Bruns notified Ally Financial Inc. that its clients believe that Ally Financial Inc. and its affiliates, as master servicer and/or servicer of the mortgage loans underlying the RMBS, have failed to observe and perform their servicing obligations under the PSAs ("Servicing Claims"); and

WHEREAS Ally Financial Inc. responded to the October 17 letter rejecting exposure to or liability of Ally Financial Inc. for any of the Repurchasing or Servicing Claims on grounds stated therein, but referred Gibbs & Bruns to counsel for ResCap Mortgage Companies;

WHEREAS Ally Financial Inc. flatly rejects assertions of Gibbs & Bruns or others that Ally Financial Inc. has exposure to or liability for any Repurchase Claims or Servicing Claims; and

WHEREAS neither the ResCap Mortgage Companies nor Ally Financial Inc. accept, adopt or ratify any of the assertions of Gibbs & Bruns with regard to the Repurchase Claims or the Servicing Claims; and

WHEREAS, Gibbs & Bruns exchanged various correspondence with Ally Financial Inc. and ResCap Mortgage Companies regarding the October 17 letter; and

WHEREAS, on November 21, 2011, Gibbs & Bruns met with ResCap Mortgage Companies to discuss the issues raised by the October 17 letter; and

WHEREAS, Gibbs & Bruns and ResCap Mortgage Companies wish to continue a constructive dialogue regarding the issues raised by the October 17 letter ("Constructive Dialogue"); and

WHEREAS, Ally Financial Inc. may be interested in participating in some measure in the Constructive Dialogue; and

Deleted: of Ally Financial Inc.

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WHEREAS, Gibbs & Bruns has identified, subject to a Confidentiality Agreement executed by the Parties hereto, each of the clients it represents in connection with the Settlement Dialogue ("Gibbs & Bruns Clients"); and

WHEREAS, Gibbs & Bruns has identified, subject to a Confidentiality Agreement executed by the Parties hereto, for each of the Gibbs & Bruns Clients, the ownership interest the Gibbs & Bruns Client has in each of the respective RMBS in which such Gibbs & Bruns Client has an interest (collectively, the "Covered Interests");

NOW therefore, each of the undersigned, on behalf of themselves and/or their respective clients, confirms and agrees as follows:

1. In consideration of Gibbs & Bruns' Clients forbearing to assert the Repurchase and Servicing Claims as to their respective Covered Interests in this time period, and consistent with New York General Obligations Law § 17-103, any statutes of limitation, repose, or laches applicable only to the Repurchase Claims and/or the Servicing Claims as to only such Covered Interests shall be tolled, and Ally Financial Inc. and ResCap Mortgage Companies waive and covenant and agree not to assert such statutes of limitation, repose, or laches, for a period of 120 days, commencing on January 1, 2012 (that is, until the end of 2012) (the "Forbearance and Tolling Period"), terminable by Gibbs & Bruns, Ally Financial Inc., or ResCap Mortgage Companies upon 30 days' written notice to the other parties to this Agreement.
2. This Tolling Agreement shall apply only to the Repurchase Claims and/or the Servicing Claims as to only the Covered Interests regardless of whether such claims are asserted by a Trustee or by Certificateholders, who may endeavor, under certain circumstances, to assert such claims in a derivative capacity, for the common benefit of all Certificateholders.
3. Nothing in this Agreement waives, impairs or otherwise in any way limits the rights of Ally Financial Inc. or any of the ResCap Mortgage Companies or the affiliates of any of them from responding to, addressing or defending (1) any Repurchase Claims, Servicing Claims or any similar, related or overlapping claims of any sort at any time, whether relating to the Covered Interests or not, or (2) any claims or inquiries whatsoever arising out of or in connection with any of the RMBS, including during the period of this Agreement.
4. Nothing in this Agreement waives or impairs the rights of any Party to raise and assert any statutes of limitation, statutes of repose, or laches, or any similar or related defenses of any sort, available to such Parties prior to or after the Forbearance and Tolling Period.
5. Nothing in this Agreement is or shall be construed to be an admission of any of the Parties as to the merits of any claims relating to the Covered Interests or to any Repurchase Claims or Servicing Claims as to any of them.

ACKNOWLEDGED AND AGREED this ___ day of January, 2012:

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By: _____
Kathy D. Patrick

For Gibbs & Bruns and its clients

By: _____
Name:
Title:

For Ally Financial Inc.

By: _____
Name:
Title:

For ~~ResCap~~ Mortgage Companies

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Confidentiality Undertaking

WHEREAS, Gibbs & Bruns LLP ("Gibbs & Bruns") and its clients listed on Exhibit A ("Gibbs & Bruns Clients"), Residential Capital, LLC and various of its subsidiaries and affiliates, including, without limitation, GMAC Mortgage, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Asset Securities Corp., Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., and Homecomings Financial, LLC (collectively, "ResCap Mortgage Companies"), and Ally Financial Inc., are interested in discussing potential resolutions of alleged issues regarding certain Residential Mortgage Backed Securities, identified in Exhibit B, issued and/or underwritten by various of the ResCap Mortgage Companies ("RMBS");

NOW therefore, each of the undersigned, on behalf of themselves and/or their respective clients, confirms and agrees, effective January 1, 2012, as follows:

1. Any discussions that take place between Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc. and ResCap Mortgage Companies while this Agreement is in effect ("Discussions") are in the nature of compromise and settlement discussions, such that all of the protections of Rule 408 of the Federal Rules of Evidence and Section 4547 of New York's Civil Practice Law and Rules, as well as those applicable protections provided under any and all analogous evidentiary rules and/or privileges of the laws of any other applicable jurisdiction, shall apply to such Discussions.

2. Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., and ResCap Mortgage Companies will not disclose the existence or contents of such Discussions to anyone beyond those individuals (employees, counsel, experts and/or agents) actively engaged in considering and/or discussing the potential resolutions of the alleged issues between or among them, without the advance written consent of the other parties.

3. If required by applicable law or if Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., or ResCap Mortgage Companies receive a subpoena, court order, or other similar process for the purpose of disclosing the existence or contents of such Discussions, Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., and ResCap Mortgage Companies are not prohibited from disclosing the existence or contents of such Discussions; provided that, unless prohibited, the entity required by applicable law to make disclosure or that received the subpoena, court order, or similar process notifies the other parties of said subpoena, court order, or similar process within seven days of receiving it, or promptly if the disclosure must be made sooner, and to the extent practicable provides the other parties an opportunity to exercise their legal options to prohibit or limit such disclosure. Gibbs & Bruns is permitted, however, to disclose the existence, but not the contents, of such Discussions on a

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confidential basis to a conservator, regulator or government oversight body in response to a general or specific request by such conservator, regulator or government oversight body without any notice to or consent by Ally Financial Inc. or ResCap Mortgage Companies. Ally Financial Inc. and ResCap Mortgage Companies are permitted to disclose the existence, but not the contents, of such Discussions on a confidential basis to bank regulators in response to a general or specific request by such regulators, without any notice to or consent by Gibbs & Bruns. Ally Financial Inc., and ResCap Mortgage Companies are permitted, at their sole discretion, to disclose the existence of the Discussions as they may deem advisable in connection with any regulatory or financial disclosures or similar disclosures. Ally Financial Inc. and ResCap are permitted, at their sole discretion, to disclose the Discussions as they may deem advisable in the event they or affiliates of either are approached by or otherwise receive communications, demands or requests from a Trustee or other interested party in connection with any of the RMBS.

4. The purpose of this Agreement is to reflect the parties' intentions and to confirm the parties' entire agreement as to the confidentiality of such Discussions. Nothing in this Agreement shall require either party to produce information. To the extent the ResCap Mortgage Companies or Ally Financial Inc. decide at their sole discretion to produce certain records in connection with the Discussions, they reserve the right to seek express contractual and other protections and limitations on access to such information separate from this Agreement.

5. Nothing in this Agreement shall preclude Gibbs & Bruns from filing suit against Ally Financial Inc. and/or ResCap Mortgage Companies should such Discussions be terminated. This Agreement is terminable by either party on thirty (30) days written notice; provided, however, that the obligations herein to keep confidential such Discussions shall survive the termination of this Agreement.

6. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its choice of law provisions.

7. Entry into this Agreement does not waive any rights, including but not limited to any rights to information, that the parties may have under the Pooling and Servicing Agreements or other similar agreements ("PSAs") for each of the RMBS covered by the Tolling Agreement dated January [REDACTED], 2012, and the parties expressly reserve all rights, arguments and defenses (and nothing herein shall limit the ability to assert such rights, arguments and defenses), including but not limited to all rights, arguments and defenses under those PSAs.

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Deleted: 2011

8. The parties hereto represent and warrant that they are authorized to enter this Agreement and, in the case of Gibbs & Bruns, that Gibbs & Bruns is expressly authorized to sign on behalf of and to bind the Gibbs & Bruns Clients to this Agreement.

9. Nothing in this Agreement is intended to or shall constitute an admission of any liability by any party to it. Ally Financial Inc. expressly rejects exposure to and/or liability for any of the RMBS.

ACKNOWLEDGED AND AGREED this ___ day of January, 2012:

By: _____
Kathy D. Patrick

For Gibbs & Bruns and its Clients

By: _____
Name:
Title:

For Ally Financial Inc.

By: _____
Name:
Title:

For ResCap Mortgage Companies

Formatted: Bullets and Numbering

Deleted: December

Deleted: 2011

Deleted: clients

Deleted: Ally

A. 18

From: David Sheeren
Sent: Friday, January 13, 2012 3:57 PM
To: Devine, Timothy; Kathy D. Patrick; Scott A. Humphries
Cc: Hamzehpour, Tammy; Ruckdaschel, John; Hagens, David
Subject: RE: Confi and Tolling Agreement
Attachments: Ally Confidentiality Agreement_1.13.docx; Ally Tolling Agreement_1.13.docx

Tim,

Please see attached. We are fine with most of your edits to the draft Confidentiality Agreement and draft Tolling Agreement. We have made some additional changes in these versions.

Thanks,

David

From: Devine, Timothy [mailto:Timothy.Devine@ally.com]
Sent: Monday, January 09, 2012 5:45 PM
To: Kathy D. Patrick; David Sheeren
Cc: Hamzehpour, Tammy; Ruckdaschel, John; Hagens, David
Subject: RE: Confi and Tolling Agreement

CONFIDENTIAL

FOR SETTLEMENT PURPOSES ONLY

Kathy and David:

Please see the attached markups of the draft Confi and Tolling Agreement you had sent over.

The rationale for some of the markups will be self-evident. There are some I would like to walk through with you at your convenience.

Among the points we're addressing by markups to the Confi are potential that the talks may need to be disclosed in public financial filings, as apparently some banks may have done. Also that we may contractually be required to disclose them if we are approached by a Trustee or other claimant asserting standing to challenge us on the applicable contract.

Finally, should we all proceed to a production of loan files or similar records containing customer or investor information, we may need to enter additional agreements protecting the PII or other info more expressly.

Biggest point in the markups to the draft Tolling Agreement I think is that we ought to have the particular interests of your clients identified as against particular deals, so that all parties involved have a clear and unambiguous meeting of the minds as to what particular claims are covered by the agreements and the discussions. Also need to address risk that other parties or counsel may bring claims or inquiries relating to the same investments which are the basis of the interests under discussion here - whether such claims come for example from a monoline, a trustee, a government agent or agency of any sort, etc. - which of course we would need to address and/or defend.

I'm out of town tomorrow, back in the office the rest of the week.
Happy to discuss, to answer questions.

Looking forward to next steps.

Thanks.

Tim

Timothy A. Devine

Chief Counsel - Litigation

Ally Financial Inc. Legal Staff

200 Renaissance Center

M/C: 482-B09-B11

Detroit, MI 48265

(313) 656-3477

From: Devine, Timothy
Sent: Wednesday, December 14, 2011 9:46 PM
To: dsheeren@gibbsbruns.com
Cc: Hamzehpour, Tammy; Ruckdaschel, John; Hagens, David
Subject: FW: Confi and Tolling Agreement

David:

Tammy has asked me to follow up on your email. I will do so shortly.
Will you please send me email contact info for Kathy and Scott?

Thanks.

Tim

Timothy A. Devine

Chief Counsel - Litigation

Ally Financial Inc. Legal Staff

200 Renaissance Center

M/C: 482-B09-B11

Detroit, MI 48265

(313) 656-3477

From: David Sheeren [mailto:dsheeren@gibbsbruns.com]
Sent: Wednesday, December 07, 2011 11:24 AM
To: Hamzehpour, Tammy
Cc: Kathy D. Patrick; Scott A. Humphries
Subject: Confi and Tolling Agreement

Tammy,

Attached for your review, please find a draft Confidentiality Agreement and a draft Tolling Agreement.

Best regards,

David

David Sheeren

Gibbs & Bruns LLP

1100 Louisiana, Suite 5300

Houston, Texas 77002

713.751.5207 (o)

713.459.6278 (c)

Confidentiality Undertaking

WHEREAS, Gibbs & Bruns LLP (“Gibbs & Bruns”) and its clients listed on Exhibit A (“Gibbs & Bruns Clients”), Residential Capital, LLC and various of its subsidiaries and affiliates, including, without limitation, GMAC Mortgage, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Asset Securities Corp., Residential Accredited Loans, Inc., Residential Asset Mortgage Products, Inc., and Homecomings Financial, LLC (collectively, “ResCap Mortgage Companies”), and Ally Financial Inc., are interested in discussing potential resolutions of alleged issues regarding certain Residential Mortgage Backed Securities, identified in Exhibit B, issued and/or underwritten by various of the ResCap Mortgage Companies (“RMBS”);

NOW therefore, each of the undersigned, on behalf of themselves and/or their respective clients, confirms and agrees, effective January [.....], 2012, as follows:

1. Any discussions that take place between Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc. and ResCap Mortgage Companies while this Agreement is in effect (“Discussions”) are in the nature of compromise and settlement discussions, such that all of the protections of Rule 408 of the Federal Rules of Evidence and Section 4547 of New York’s Civil Practice Law and Rules, as well as those applicable protections provided under any and all analogous evidentiary rules and/or privileges of the laws of any other applicable jurisdiction, shall apply to such Discussions.
2. Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., and ResCap Mortgage Companies will not disclose the existence or contents of such Discussions to anyone beyond those individuals (employees, counsel, experts and/or agents) actively engaged in considering and/or discussing the potential resolutions of the alleged issues between or among them, without the advance written consent of the other parties.
3. If required by applicable law or if Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., or ResCap Mortgage Companies receive a subpoena, court order, or other similar process for the purpose of disclosing the existence or contents of such Discussions, Gibbs & Bruns, Gibbs & Bruns Clients, Ally Financial Inc., and ResCap Mortgage Companies are not prohibited from disclosing the existence or contents of such Discussions; provided that, unless prohibited, the entity required by applicable law to make disclosure or that received the subpoena, court order, or similar process notifies the other parties of said subpoena, court order, or similar process within seven days of receiving it, or promptly if the disclosure must be made sooner, and to the extent practicable provides the other parties an opportunity to exercise their legal options to prohibit or limit such disclosure. Gibbs & Bruns is permitted, however, to disclose the existence, but not the contents, of such Discussions on a

confidential basis to a conservator, regulator or government oversight body in response to a general or specific request by such conservator, regulator or government oversight body without any notice to or consent by Ally Financial Inc. or ResCap Mortgage Companies. Ally Financial Inc. and ResCap Mortgage Companies are permitted to disclose the existence, but not the contents, of such Discussions on a confidential basis to bank regulators in response to a general or specific request by such regulators, without any notice to or consent by Gibbs & Bruns. Ally Financial Inc., and ResCap Mortgage Companies are permitted, at their sole discretion, to disclose the existence of the Discussions as they may deem advisable in connection with any regulatory or financial disclosures. Ally Financial Inc. and ResCap are permitted, at their sole discretion, to disclose the existence, but not the contents, of the Discussions as they may deem advisable in the event they or affiliates of either are approached by or otherwise receive communications, demands or requests from a Trustee in connection with any of the RMBS.

4. The purpose of this Agreement is to reflect the parties' intentions and to confirm the parties' entire agreement as to the confidentiality of such Discussions. Nothing in this Agreement shall require either party to produce information. To the extent the ResCap Mortgage Companies or Ally Financial Inc. decide at their sole discretion to produce certain records in connection with the Discussions, they reserve the right to seek express contractual and other protections and limitations on access to such information separate from this Agreement.

5. Nothing in this Agreement shall preclude Gibbs & Bruns from filing suit against Ally Financial Inc. and/or ResCap Mortgage Companies should such Discussions be terminated. This Agreement is terminable by either party on thirty (30) days written notice; provided, however, that the obligations herein to keep confidential such Discussions shall survive the termination of this Agreement.

6. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York without regard to its choice of law provisions.

7. Entry into this Agreement does not waive any rights, including but not limited to any rights to information, that the parties may have under the Pooling and Servicing Agreements or other similar agreements ("PSAs") for each of the RMBS covered by the Tolling Agreement dated January [.....], 2012, and the parties expressly reserve all rights, arguments and defenses (and nothing herein shall limit the ability to assert such rights, arguments and defenses), including but not limited to all rights, arguments and defenses under those PSAs.

8. The parties hereto represent and warrant that they are authorized to enter into this Agreement and, in the case of Gibbs & Bruns, that Gibbs & Bruns is expressly authorized to sign on behalf of and to bind the Gibbs & Bruns Clients to this Agreement.

9. Nothing in this Agreement is intended to or shall constitute an admission of any liability or defense by any party to it. Ally Financial Inc. expressly rejects exposure to and/or liability for any of the RMBS.

ACKNOWLEDGED AND AGREED this ___ day of January, 2012:

By: _____
Kathy D. Patrick

For Gibbs & Bruns and its Clients

By: _____
Name:
Title:

For Ally Financial Inc.

By: _____
Name:
Title:

For ResCap Mortgage Companies

Tolling Agreement

WHEREAS, Residential Capital, LLC, and various of its subsidiaries and affiliates, including, without limitation, GMAC Mortgage, LLC, Residential Funding Company, LLC, Residential Funding Mortgage Securities I, Inc., Residential Funding Mortgage Securities II, Inc., Residential Asset Securities Corp., Residential Accredit Loans, Inc., Residential Asset Mortgage Products, Inc., and Homecomings Financials, LLC (collectively, "ResCap Mortgage Companies"), are parties to Pooling and Servicing Agreements, or other similar agreements ("PSAs"), governing Residential Mortgage Backed Securities issued and/or underwritten by ResCap Mortgage Companies ("RMBS"); and

WHEREAS, in a letter dated October 17, 2011, Gibbs & Bruns LLP, on behalf of its clients ("Gibbs and Bruns"), notified Ally Financial Inc. that its clients held (or managed accounts which held) 25% of the voting rights of a class in 242 RMBS, which are identified in Exhibit A hereto ; and

WHEREAS, in the October 17 letter, Gibbs & Bruns notified Ally Financial Inc. that its clients believe that large numbers of mortgage loans which violate representations and warranties were sold or deposited into, and remain in, the RMBS pools, and that, under the PSAs, Ally Financial Inc. and its affiliates have substantial repurchase liability for such loans ("Repurchase Claims"); and

WHEREAS, in the October 17 letter, Gibbs & Bruns notified Ally Financial Inc. that its clients believe that Ally Financial Inc. and its affiliates, as master servicer and/or servicer of the mortgage loans underlying the RMBS, have failed to observe and perform their servicing obligations under the PSAs ("Servicing Claims"); and

WHEREAS Ally Financial Inc. responded to the October 17 letter rejecting exposure to or liability of Ally Financial Inc. for any of the Repurchasing or Servicing Claims on grounds stated therein, but referred Gibbs & Bruns to counsel for ResCap Mortgage Companies;

WHEREAS Ally Financial Inc. flatly rejects assertions of Gibbs & Bruns or others that Ally Financial Inc. has exposure to or liability for any Repurchase Claims or Servicing Claims; and

WHEREAS neither the ResCap Mortgage Companies nor Ally Financial Inc. accept, adopt or ratify any of the assertions of Gibbs & Bruns with regard to the Repurchase Claims or the Servicing Claims; and

WHEREAS, Gibbs & Bruns exchanged various correspondence with Ally Financial Inc. and ResCap Mortgage Companies regarding the October 17 letter; and

WHEREAS, on November 21, 2011, Gibbs & Bruns met with Ally Financial Inc. and ResCap Mortgage Companies to discuss the issues raised by the October 17 letter; and

WHEREAS, Gibbs & Bruns and ResCap Mortgage Companies wish to continue a constructive dialogue regarding the issues raised by the October 17 letter ("Constructive Dialogue"); and

WHEREAS, Ally Financial Inc. may be interested in participating in some measure in the Constructive Dialogue; and

WHEREAS, Gibbs & Bruns has identified, subject to a Confidentiality Agreement executed by the Parties hereto, each of the clients it represents in connection with the Settlement Dialogue ("Gibbs & Bruns Clients"); and

WHEREAS, Gibbs & Bruns has identified, subject to a Confidentiality Agreement executed by the Parties hereto, the collective ownership interest the Gibbs & Bruns Clients have in each of the respective RMBS in which such Gibbs & Bruns Clients have an interest (collectively, the "Covered Interests");

NOW therefore, each of the undersigned, on behalf of themselves and/or their respective clients, confirms and agrees as follows:

1. In consideration of Gibbs & Bruns' Clients forbearing to assert the Repurchase and Servicing Claims as to their Covered Interests in this time period, and consistent with New York General Obligations Law § 17-103, any statutes of limitation, repose, or laches applicable only to the Repurchase Claims and/or the Servicing Claims as to only such Covered Interests shall be tolled for a period of 120 days, commencing on January ____, 2012 (that is, until the end of ____.) (the "Forbearance and Tolling Period"), terminable by Gibbs & Bruns, Ally Financial Inc., or ResCap Mortgage Companies upon 30 days' written notice to the other parties to this Agreement, and Ally Financial Inc. and ResCap Mortgage Companies waive and covenant and agree not to assert such statutes of limitation, repose, or laches for that time period.
2. This Tolling Agreement shall apply only to the Repurchase Claims and/or the Servicing Claims as to only the Covered Interests regardless of whether such claims are asserted by a Trustee or by Certificateholders, who may endeavor, under certain circumstances, to assert such claims in a derivative capacity, for the common benefit of all Certificateholders.
3. Nothing in this Agreement waives, impairs or otherwise in any way limits the rights of Ally Financial Inc. or any of the ResCap Mortgage Companies or the affiliates of any of them from responding to, addressing or defending (1) any Repurchase Claims, Servicing Claims or any similar, related or overlapping claims of any sort at any time, whether relating to the Covered Interests or not, or (2) any claims or inquiries whatsoever arising out of or in connection with any of the RMBS, including during the period of this Agreement.
4. Nothing in this Agreement waives or impairs the rights of any Party to raise and assert any statutes of limitation, statutes of repose, or laches, or any similar or related defenses of any sort, available to such Parties prior to or after the Forbearance and Tolling Period.
5. Nothing in this Agreement is or shall be construed to be an admission of any of the Parties as to the merits of any claims or defenses relating to the Covered Interests or to any Repurchase Claims or Servicing Claims as to any of them.

ACKNOWLEDGED AND AGREED this __ day of January, 2012:

By: _____
Kathy D. Patrick

For Gibbs & Bruns and its clients

By: _____
Name:
Title:

For Ally Financial Inc.

By: _____
Name:
Title:

For ResCap Mortgage Companies

A. 19

ResCap

Steve Abreu
Jonathan Ilany
John Mack
Tom Marano
Ted Smith
Pam West
Jim Whitlinger

Residential Capital, LLC – Claims Analysis Meeting
Wednesday, January 25, 2012, 12:00 to 5:00 pm (ET)

Morrison & Foerster LLP will meet with the ResCap Board of Directors to discuss its claims analysis and independent review process on Wednesday, January 25, 2012, from 12:00 to 5:00 pm (ET). The meeting will be held in the offices of Morrison & Foerster LLP.

Morrison & Foerster LLP
1290 Avenue of the Americas
New York, NY 10104

Lunch will be available at 12:00 pm. Supporting materials, if any, will be distributed prior to the meeting. Please confirm that you plan to attend the meeting in person. Also please note that the tentative ResCap Board meeting date of Thursday, January 26, 2012 (9:00 to 10:00 am) has been removed from the draft 2012 Board meeting schedule.

Please feel free to contact me by phone (313-656-6301) or email (cathy.quenneville@ally.com) should you have any questions. Thank you.

Cathy Quenneville
Secretary
1/17/12

cc: Tammy Hamzehpour
Morrison Cohen
Morrison & Foerster

ResCap Confidential

CONFIDENTIAL

RC40020213



MINUTES of a Special Meeting the Board of Residential Capital, LLC ("ResCap" or the "Company"), held on due notice at 1290 Avenue of the Americas, New York, New York, on January 25, 2012, at 12:24 p.m. (ET).

PRESENT: Steven M. Abreu
Jonathan Ilany
John E. Mack
Thomas F. Marano
Edward F. Smith III
Pamela E. West
James M. Whitlinger

constituting all of the Board. Mr. Smith participated by telephone.

Invited guest in attendance was Tammy Hamzehpour.

Invited advisers in attendance were Michael Connolly and Joseph T. Moldovan from Morrison Cohen LLP, and Nilene R. Evans, Gary S. Lee, Darren M. Nashelsky, Jamie A. Levitt, Anna T. Pinedo and James R. Tanenbaum from Morrison & Foerster LLP.

Additional invited guests in attendance were William J. Nolan and Mark Renzi from FTI Consultants, Inc.

The Chairman, Mr. Marano, presided; he requested that Ms Evans record the minutes.

Mr. Marano immediately moved the meeting into Executive Session.

Executive Session

Mr. Lee, Ms. Levitt and Ms. Pinedo presented the initial results of their independent review of historical transactions between ResCap and Ally Financial Inc. ("Ally"), its predecessors and affiliates, including Cerberus entities. The Board was provided with presentation materials prior to the meeting. They also discussed their initial analysis of potential claims that could be made against Ally in a potential Rule 9019 settlement discussion with Ally in connection with a potential bankruptcy filing by ResCap as well as the overall Rule 9019 process. The Board and advisers engaged in considerable and robust discussion regarding this presentation.

At approximately 3:00 p.m., the Meeting was adjourned, all the advisers left the meeting and the members of the Board met with Michael Carpenter, Chief Executive Officer of Ally. At approximately 3:33 p.m., after Mr. Carpenter had left, the advisers re-entered the meeting and the Executive Session resumed.

Messrs. Marano, Whittlinger and Abreu then discussed, among other topics, the status of the proposed settlement with the Department of Justice and States Attorneys General ("DOJ/AG Settlement"), the status of the negotiations with Ally regarding its support letter relating to the potential civil money penalty from the Federal Reserve Board arising out of its Consent Order (the "FRB Fine") as well as the DOJ/AG Settlement, and their meetings on January 23, 2012 with the U.S. Treasury, Federal Housing Finance Agency and Federal Housing Administration. The Board members engaged in a robust discussion of these matters. During the discussion, at approximately 4:50 p.m., Mr. David DeBrunner joined the meeting to respond to questions from the members of the Board regarding certain related accounting considerations. He was then excused from the meeting.

Authorization Regarding Federal Reserve Board Consent Assessment Order

At approximately 5:25 p.m., the Board moved out of Executive Session in order to consider a resolution authorizing Mr. Marano to take certain actions with respect to the FRB Fine. Upon motion duly made and seconded, it was unanimously

RESOLVED, that this Board delegates full authority to and directs Thomas F. Marano, in his capacity as Chief Executive Officer of Residential Capital, LLC, to enter into a Consent Assessment Order by and among Ally Financial Inc., Residential Capital, LLC, GMAC Mortgage, LLC, and the Board of Governors of the Federal Reserve System, in substantially the form and on the terms set forth in the draft thereof previously delivered to the Board members (with the blank information completed), on behalf of Residential Capital, LLC, and, upon the full execution of the Consent Assessment Order by all parties thereto, consents to compliance with each and every applicable provision of the Consent Assessment Order and waives any and all rights that ResCap may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818).

Mr. Mack and Mr. Iliany abstained from voting on the foregoing resolution.

ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 5:30 p.m.

DATED January 25, 2012.


Nilene R. Evans, Recording Secretary

A. 20

REDACTED

A. 21

From: Hamzehpour, Tammy
Sent: 3/7/2012 10:16:04 AM
To: Devine, Timothy; Thompson, William - Legal Dept - PA; Ruckdaschel, John; Zellmann, Patty - MN; Solomon, William Legal
Subject: RE: ResCap Discussions

Redacted

-----Original Message-----

From: Devine, Timothy
Sent: Tuesday, March 06, 2012 11:39 PM
To: Hamzehpour, Tammy; Thompson, William - Legal Dept - PA; Ruckdaschel, John; Zellmann, Patty - MN; Solomon, William Legal
Subject: FW: ResCap Discussions

Redacted

-----Original Message-----

From: Kathy D. Patrick [mailto:kpatrick@gibbsbruns.com]
Sent: Tuesday, March 06, 2012 11:12 PM
To: Devine, Timothy
Cc: Rosten, Linda; Kathy D. Patrick; Scott A. Humphries
Subject: RE: ResCap Discussions

Certainly. Please look at your schedule and let me know a time that works. Wednesday and Thursday are generally open for me, but morning is preferable.

From: Devine, Timothy [mailto:Timothy.Devine@ally.com]
Sent: Tue 3/6/2012 9:27 PM
To: Kathy D. Patrick
Cc: Rosten, Linda
Subject: ResCap Discussions

CONFIDENTIAL PER AGREEMENT

I got your voicemail. I have been out of the country since Thursday and will conclude meetings this Friday night, landing in Detroit Saturday morning. Like running a marathon. Can we schedule a time next week?

Thanks.

Tim

Timothy A. Devine

Chief Counsel - Litigation

Ally Financial Inc. Legal Staff

200 Renaissance Center

M/C: 482-B09-B11

Detroit, MI 48265

(313) 656-3477

A. 22

From: Talcott J. Franklin <Tal@talcottfranklin.com>
Sent: Wednesday, March 7, 2012 1:19 PM
To: Devine, Timothy <Timothy.Devine@ally.com>
Subject: Re: Call

That would be helpful. I look forward to your call. If you cannot reach me on my direct line, please try my cell.

Tal Franklin
Talcott Franklin P.C.
208 North Market Street
Suite 200
Dallas, Texas 75202
214.321.3838 direct
214.736.8730 main
214.642.9191 cell
877.577.1356 fax
tal@talcottfranklin.com
www.talcottfranklin.com

From: "Devine, Timothy" <Timothy.Devine@ally.com>
Date: Wed, 7 Mar 2012 13:02:00 -0600
To: Talcott Franklin <tal@talcottfranklin.com>
Subject: RE: Call

PRIVILEGED AND CONFIDENTIAL

I will phone you but it may not be until tomorrow. Out of country in meetings. I apologize.

I won't be surprised at all if the client counters on those deals but it's a slow process. I can perhaps give some process generalities to help manage your client's expectations.

Tim

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Talcott J. Franklin [<mailto:tal@talcottfranklin.com>]
Sent: Wednesday, March 07, 2012 1:58 PM
To: Devine, Timothy
Subject: Call

Tim:
Could you please call me? A couple of my clients are getting antsy and we need to show some progress or I'm concerned about escalation. Is there a chance someone can get back to me with a counter on Q03 and QAL3? If so, when?
Tal

Tal Franklin
Talcott Franklin P.C.
208 North Market Street
Suite 200
Dallas, Texas 75202
214.321.3838 direct
214.736.8730 main
214.642.9191 cell
877.577.1356 fax
tal@talcottfranklin.com
www.talcottfranklin.com

CONFIDENTIAL

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DISCLAIMER:

The information contained in this message may be privileged, confidential, and protected from disclosure. You, the recipient, are obligated to maintain it in a safe, secure and confidential manner. If you are not the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message. Re-disclosure without additional consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties described in federal and state law.

IRS Circular 230 disclosure: ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED, BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN.

DISCLAIMER:

The information contained in this message may be privileged, confidential, and protected from disclosure. You, the recipient, are obligated to maintain it in a safe, secure and confidential manner. If you are not the intended recipient, or an employee, or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by replying to the message. Re-disclosure without additional consent or as permitted by law is prohibited. Unauthorized re-disclosure or failure to maintain confidentiality could subject you to penalties described in federal and state law.

IRS Circular 230 disclosure: ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED, BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN.

A. 23

From: Devine, Timothy
Sent: Sunday, May 13, 2012 3:53 PM
To: Ornstein, Noah; Levitt, Jamie A.; Ruckdaschel, John
Cc: Lee, Gary S.; Princi, Anthony
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

I think we need to tell him that we can't sign a deal that permits lawsuits to be filed which might logically lead to someone turning to us for ultimate responsibility. If, on the other hand, we do enter such a deal, we need those persons with discretion to file such suits to be responsible to us for any harm we might suffer. His choice.

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Ornstein, Noah [mailto:nornstein@kirkland.com]
Sent: Sunday, May 13, 2012 11:48 AM
To: Devine, Timothy; 'Levitt, Jamie A.'; Ruckdaschel, John
Cc: 'Lee, Gary S.'; 'Princi, Anthony'
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

He has refused the indemnification piece. So, think now it is below compromise or tell him to choose between the deal and his third party pursuits

From: Devine, Timothy [mailto:Timothy.Devine@ally.com]
Sent: Sunday, May 13, 2012 11:46 AM
To: Ornstein, Noah; 'Levitt, Jamie A.'; Ruckdaschel, John
Cc: 'Lee, Gary S.'; 'Princi, Anthony'
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

Yes – and that ResCap or Ally shall be indemnified for any loss resulting from any such action.

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Ornstein, Noah [mailto:nornstein@kirkland.com]
Sent: Sunday, May 13, 2012 10:08 AM
To: 'Levitt, Jamie A.'; Devine, Timothy; Ruckdaschel, John
Cc: 'Lee, Gary S.'; 'Princi, Anthony'
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

Would propose at minimum (or something to this effect):

7.05: Servicing of the Mortgage Loans. Except as provided in Section 8.01, the release and waiver in Article VII includes all claims based in whole or in part on any actions, inactions, or practices of the Master Servicer, Servicer, or

12-12020-mg Doc 2820-1 Filed 02/01/13 Entered 02/01/13 19:12:06 Vol. 1: A 1
Subservicer as to the servicing of the Mortgage Loans held by the Trusts. The foregoing language is not intended to
release any claims against any person other than ResCap and Ally; provided, Consenting Claimants are not
permitted to bring claims against any Master Servicer, Servicer, or Subservicer if doing so in any way adversely
effects ResCap or Ally.

From: Levitt, Jamie A. [mailto:JLevitt@mofo.com]
Sent: Sunday, May 13, 2012 10:02 AM
To: Devine, Timothy; John.Ruckdaschel@ally.com; Ornstein, Noah
Cc: Lee, Gary S.; Princi, Anthony
Subject: RE: RMBS Trust Settlement - Rule 408 Communication
Importance: High

Tim and John,

Talcott Franklin will settle with one clarification -- but because I know you have been dealing with this issue I really need your input (asap bc he is talking to his clients this morning. He wants the agreement to be specific that the release does not release claims against non-Rescap entities relating to servicing. So in particular he talked to us about claims against Auroro or David Stern (attorneys) or Northwest. He will instruct the trustees to bring claims against these entities whom he claims overcharged for services and harmed Rescap (not his concern) or the Trusts (ie for reimbursed advances). His argument is that these claims are more valuable potentially than the additional recovery he'll get in the settlement and he does not know why his clients should be forced to release against third parties (other than Ally).

The current language says:

7.05: Servicing of the Mortgage Loans. Except as provided in Section 8.01, the release and waiver in Article VII includes **all claims based** in whole or in part **on any** actions, inactions, or practices of the **Master Servicer**, Servicer, or **Subservicer** as to the servicing of the Mortgage Loans held by the Trusts.

He wants to add a sentence that says this provision "**is not intended to release any claims against any person other than ResCap.**" (and he doesn't mean to sue any Ally entity)

I explained that the problem is we don't want him to bring claims that are going to find their way back to ResCap for indemnification or in other ways. He said others are going to instruct the trustees even if he settles so these cases are not going away anyway. He said he has discussed this with you from the time of his first call.

Can we agree to this with Tal so he preserves his Aurora type claims or should I tell him we are in fact trying to get him to waive these third party claims and he can take it or leave it?

From: Devine, Timothy [mailto:Timothy.Devine@ally.com]
Sent: Sunday, May 13, 2012 9:06 AM
To: Princi, Anthony; rcieri@kirkland.com; Levitt, Jamie A.
Cc: nornstein@kirkland.com; Lee, Gary S.; Newton, James A.; Clark, Daniel E.; Jeffrey A. Lipps
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

MoFo and Kirkland:

I am out of pocket from now until about noon. I apologize.

I have an AFI Bd Mtg at 1 pm, at which time I will have to report as to whether we have a deal or not.

I recommend that the teams meet in the mean time to close down to the final final language all other items. Keep banging them on the concept Tony describes below. Then we can together try to close that deal.

I will say this -- we can't close the deal unless we get something very much like what Tony has described.

Jeff Lipps will update as to status of discussion with opposing counsel on the Thrivent deal. We intend to have a term sheet binding between counsel as the embodiment of that agreement. There's no time to do a complete settlement agreement by today.

Thanks.

Tim

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265
(313) 656-3477

From: Princi, Anthony [mailto:APrinci@mofo.com]

Sent: Sunday, May 13, 2012 8:50 AM

To: kpatrick@gibbsbruns.com; rcieri@kirkland.com; Levitt, Jamie A.; Ross.Martin@ropesgray.com; SHumphries@gibbsbruns.com

Cc: nornstein@kirkland.com; Lee, Gary S.; Devine, Timothy; Newton, James A.; Clark, Daniel E.

Subject: Re: RMBS Trust Settlement - Rule 408 Communication

Kathy, we need to make conceptual progress on the lock-up point before the 11:30 call otherwise we will likely not get to an agreement in time.

First, this is not simply an Ally board position, it is very much a ResCap position as well (and, indeed, it was we that proposed the concept of the 25% holding condition as a way to reconcile the points you have been making with our need to assure that we are not running a fool's errand nor, worse, inviting market players to buy in and attempt to upend us).

The conceptual starting point for this is that it is conventional in any deal like this for the parties investing the money/agreeing to an allowed claim, to get assurance that they will not get "double dealt." One of the main, conventional protections in that regard is to make sure that if the counter-party demands a right to transfer their interests (which is a common demand), that any transfer require that the buyer adopt the terms of the deal.

You have told us that for a variety of business reasons your clients can/will not agree to this restriction in trading. In telling us this you have on a number of occasions informed us that it is unlikely that your clients will engage in any material trades (and consistent with that you below describe our concerns as "theoretical").

One of the linchpins of this deal for us is whether your clients can "deliver" the trustees and have them agree to these terms. In that regard the 25% threshold for holdings is critical. As a result, while we're prepared to accommodate your clients' position that they can/will not agree to any restriction in trading, for this deal to not be illusory for us we need to assure that regardless of what trading your clients engage in, their holdings don't drop below the 25% threshold necessary to deliver the trustees. Put differently, it is your clients -- and not ours -- that control the trading, and accordingly your clients should be prepared to assure that their trading does not eliminate a critical component of the bargain for us, and correspondingly accept the reality that we will need to terminate the agreement if they do.

I hope the foregoing helps to move us towards a resolution of this issue on our 11:30 call. I can not speak to the Maiden Lane issues as I was not on that call with you, but I trust you/Ally will work that out.

Tony

----- Original Message -----

From: Kathy D. Patrick <kpatrick@gibbsbruns.com>

To: Cieri, Richard M. <rcieri@kirkland.com>; Princi, Anthony; Levitt, Jamie A.; Ross.Martin@ropesgray.com

<Ross.Martin@ropesgray.com>; Scott A. Humphries <SHumphries@gibbsbruns.com>

Cc: Ornstein, Noah <nornstein@kirkland.com>; Lee, Gary S.; Timothy.Devine@ally.com <Timothy.Devine@ally.com>; Newton, James A.; Clark, Daniel E.; Kathy D. Patrick <kpatrick@gibbsbruns.com>

Sent: Sun May 13 08:22:49 2012

Subject: RE: RMBS Trust Settlement - Rule 408 Communication

All:

This morning's revision does not address the lockout issue in a way that can work; indeed, you have moved backwards by including a requirement that we maintain 25% holdings in each covered trust--holdings that our clients do not have now, as you well know. The statement you have asked Maiden Lane to make - that Maiden Lane I and Maiden Lane III each represent to the best of its knowledge that the Federal Reserve Board of Governors has taken and anticipates taking no action to require it to liquidate any of its holdings-- is exactly the opposite of

With all due respect to Ally's board counsel, they are about to crater this deal over an issue that is theoretical and not real. If they persist, they will destroy any prospect that our clients will support a third party release for Ally and its board, because our clients cannot agree to a lockout.

Perhaps, by 11:30, Ally's board counsel will see the jeopardy in which the Board has now placed the Debtor's proposed consensual restructuring. The language from our draft is the language we need.

We'll talk at 11:30.

Kathy

From: Cieri, Richard M. [mailto:rcieri@kirkland.com]
Sent: Sun 5/13/2012 6:27 AM
To: Kathy D. Patrick; 'APrinci@mofo.com'; 'JLevitt@mofo.com'; 'Ross.Martin@ropesgray.com'; Scott A. Humphries
Cc: Ornstein, Noah; 'glee@mofo.com'; 'Timothy.Devine@ally.com'; 'JNewton@mofo.com'; 'DClark@mofo.com'
Subject: Re: RMBS Trust Settlement - Rule 408 Communication

Kathy, what message? Cannot find it. Rick

From: Kathy D. Patrick [mailto:kpatrick@gibbsbruns.com]
Sent: Sunday, May 13, 2012 06:23 AM
To: APrinci@mofo.com <APrinci@mofo.com>; Kathy D. Patrick <kpatrick@gibbsbruns.com>; JLevitt@mofo.com <JLevitt@mofo.com>; Ross.Martin@ropesgray.com <Ross.Martin@ropesgray.com>; Scott A. Humphries <SHumphries@gibbsbruns.com>
Cc: Cieri, Richard M.; Ornstein, Noah; GLee@mofo.com <GLee@mofo.com>; Timothy.Devine@ally.com <Timothy.Devine@ally.com>; JNewton@mofo.com <JNewton@mofo.com>; DClark@mofo.com <DClark@mofo.com>
Subject: Re: RMBS Trust Settlement - Rule 408 Communication

Yes, we'll be ready. So long as what was sent this morning aligns with my message to Tim and Rick last night, we should be in good shape.

Kathy D. Patrick
Gibbs & Bruns, L.L.P.

From: Princi, Anthony [mailto:APrinci@mofo.com]
Sent: Sunday, May 13, 2012 06:10 AM
To: Kathy D. Patrick; Levitt, Jamie A. <JLevitt@mofo.com>; Ross.Martin@ropesgray.com <Ross.Martin@ropesgray.com>; Scott A. Humphries
Cc: rcieri@kirkland.com <rcieri@kirkland.com>; nornstein@kirkland.com <nornstein@kirkland.com>; Lee, Gary S. <GLee@mofo.com>; Timothy.Devine@ally.com <Timothy.Devine@ally.com>; Newton, James A. <JNewton@mofo.com>; Clark, Daniel E. <DClark@mofo.com>
Subject: Re: RMBS Trust Settlement - Rule 408 Communication

Kathy, to assure that with time running out we don't encounter any miscommunications, we will move the call to 11:30 am Central/12:30 pm Eastern so that you can be on the call. In view of our timing we ask that your side be prepared to work with us during the call to finalize all terms and language in both agreements so that we can shortly thereafter circulate final versions for signature. Thanks. Best, Tony

From: Kathy D. Patrick <kpatrick@gibbsbruns.com>
To: Levitt, Jamie A.; Ross.Martin@ropesgray.com <Ross.Martin@ropesgray.com>; Kathy D. Patrick <kpatrick@gibbsbruns.com>; Scott A. Humphries <SHumphries@gibbsbruns.com>
Cc: rcieri@kirkland.com <rcieri@kirkland.com>; nornstein@kirkland.com <nornstein@kirkland.com>; Lee, Gary S.; Princi, Anthony; Timothy.Devine@ally.com <Timothy.Devine@ally.com>
Sent: Sun May 13 02:49:01 2012
Subject: Re: RMBS Trust Settlement - Rule 408 Communication

Jamie and All -

The earliest I could do a call is 1130 Central.

KP

Kathy D. Patrick
Gibbs & Bruns, L.L.P.

From: Levitt, Jamie A. [mailto:JLevitt@mofo.com]
Sent: Sunday, May 13, 2012 12:55 AM
To: Ross.Martin@ropesgray.com <Ross.Martin@ropesgray.com>; Kathy D. Patrick; Scott A. Humphries
Cc: rcieri@kirkland.com <rcieri@kirkland.com>; Ornstein, Noah <nornstein@kirkland.com>; Lee, Gary S. <GLee@mofo.com>; Princi, Anthony <APrinci@mofo.com>; Devine, Timothy <Timothy.Devine@ally.com>
Subject: RMBS Trust Settlement - Rule 408 Communication

Thank you for the mark-ups. Attached are our revisions. We would like to suggest an all-hands (or as many hands as necessary) call at 9am on Sunday to discuss these last changes and finalize the agreements. If that time does not work, please let us know what other time tomorrow morning would. We need to see your exhibits, including the allocation schedule, preferably with enough time before the morning call so that we can review them.

The call-in number is 800-650-4949, code 4688203#

Thanks.

Jamie

From: Scott A. Humphries <SHumphries@gibbsbruns.com>
To: rcieri@kirkland.com <rcieri@kirkland.com>; Devine, Timothy <Timothy.Devine@ally.com>; Lee, Gary S.
Cc: Ross.Martin@ropesgray.com <Ross.Martin@ropesgray.com>; Kathy D. Patrick <kpatrick@gibbsbruns.com>; Scott A. Humphries <SHumphries@gibbsbruns.com>
Sent: Sat May 12 22:52:54 2012
Subject: RE: RMBS Trust Settlement - Rule 408 Communication

Gentlemen,

Attached are the revisions Kathy mentioned. These also include the other, minor comments that were discussed among Ropes and Mofo today.

Thanks, Scott

From: Kathy D. Patrick
Sent: Saturday, May 12, 2012 7:50 PM
To: rcieri@kirkland.com; Devine, Timothy; Gary S. Lee (GLee@mofo.com)
Cc: Kathy D. Patrick; Scott A. Humphries; Martin, D. Ross [Ross.Martin@ropesgray.com]
Subject: RMBS Trust Settlement - Rule 408 Communication

Rick, Gary and Tim:

We spent a long time on the phone with our clients this afternoon and evening. Scott will shortly send you revisions that reflect where our clients landed. There were many issues of great sensitivity to them, but I believe we have arrived at a resolution that is consistent with what I discussed this afternoon with Rick and Tim. Specifically:

1. Plan Support

Our clients are prepared to sign a plan support agreement that includes the contemplated release of individual investors' securities or fraud claims against Ally, provided that: a) all parties acknowledge the right of individual investment advisers' clients to intervene to contest any such release, and b) all parties acknowledge that the investment advisers do not own those claims and thus are neither compromising nor releasing them in any of the agreements they sign. This will permit all of our clients and the investment advisers to:

- a. Ensure they do not release or purport to release what they do not own;
- b. Express their support for a settlement that they believe is in the best interests of all Certificateholders; and,
- c. Ensure that any release granted to Ally affects all investors equally and, if granted, will be implemented only upon Ally's performance of its commitments under the Plan.

This is the most we can do given the limitations on our clients' authority, but it was sufficient in Bank of America. We believe it should be sufficient here.

We also understand, and Thrivent will require, that its separate resolution with you will be accomplished before the Plan Support Agreement is signed. Please confirm this will happen.

2. Maintenance of Holdings

Your lockup proposal is a deal breaking issue for our clients. Our clients have thousands of individual clients; others have portfolios that must be managed to meet stated investment objectives. A prospective lockup of bonds simply will not (and can never) work for them. Though there are many reasons why a sale might be necessary, our clients do not intend to pursue sales for the purpose of defeating or undermining their obligations under these agreements. History has also demonstrated that our clients have been entirely faithful to the obligations they assumed under the Bank of America settlement agreement. They have advocated zealously for the approval of that settlement for over a year. This has been true even of those investors who are advisers for others and who stand to gain nothing for themselves from the exercise. With the exception of the Maiden Lane Portfolios, whose liquidation was contemplated by the Bank of America settlement, we confirmed this afternoon that our clients have not engaged in large scale selling of their portfolios even though their Countrywide securities have gone up in price.

Our clients can and will agree to do what they did in Bank of America: they will maintain holdings in at least one trust so as to ensure they retain standing. Though it should not be necessary, they also can and will agree that they will not sell for the purpose of undermining their obligations under the Plan Support Agreement. Our clients can and will agree to advocate publicly and openly for this settlement in court. Our clients cannot, and will not, do more than that.

3. Fortress Sale

The Fortress Sale is a condition to the Ally Settlement. The Ally Settlement is--in turn--a condition to the Plan our clients are agreeing to

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support. So long as the termination of the Ally Settlement or the Fortress Settlement are events of termination for our clients, and are made express (not inherent) termination events, that should largely suffice to address our earlier concerns. We therefore propose that we: a) make those conditions express, such that their failure permits our clients or the Trustees to terminate; and, b) that we agree on a simple, mechanical process in which we send you our clients' signatures in trust, pending the execution of the Fortress and Ally Agreements. Once the Fortress Agreement is signed, we will authorize you to affix our clients' signatures to it and we can all proceed.

4. Rule 2019 Confidentiality

The disclosure of our clients' holdings is a matter of confidential and proprietary information. We had earlier requested that the Debtors undertake to seek an order providing that those holdings would be confidential for all creditors; though this request was refused at the time, we trust this will not be an ongoing problem given the matters discussed above. It would be most unfortunate if obduracy on this essential requirement were to become an impediment to what otherwise appears capable of being accomplished.

Please advise us promptly whether these changes will work. I have one final call with my clients tomorrow at 1:30 Central and we must have final terms before that time. If you need to reach me this evening, please send me an email and I will call you back.

Thanks,

Kathy

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A. 24

From: Marano, Tom
Sent: Friday, March 16, 2012 8:32 PM
To: Devine, Timothy
Cc: Solomon, William Legal; Carpenter, Michael
Subject: RE: CONFIDENTIAL ATTORNEY CLIENT PRIVILEGED WORK PRODUCT

Ill see your tolling agreement and raise you one. Please have bill send me one for ResCap claims against Ally.

Seriously, I am fine with a DB tolling agreement if you can get one while you work through various issues

Redacted

Redacted

A. 25

From: Ginger Cavanaugh <Ginger@talcottfranklin.com>
Sent: Thursday, March 22, 2012 11:00 PM
To: Timothy.Devine@Ally.com
Subject: RFC
Attach: Negotiations Letter to Ally updated (2).pdf

Mr. Devine:

Attached please find a letter from Talcott Franklin. Please confirm your receipt of same. Thank you.

--

Ginger L. Cavanaugh
Director of Firm Administration
Talcott Franklin P.C.
214.506.1088 direct
214.736.8730 main
214.326.5349 cell
Ginger@talcottfranklin.com
www.talcottfranklin.com

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SENDER'S DIRECT DIAL:
214.321.3838

March 22, 2012

Timothy A. Devine
Chief Counsel - Litigation
Ally Financial Inc. Legal Staff
200 Renaissance Center
M/C: 482-B09-B11
Detroit, MI 48265

Via email to Timothy.Devine@Ally.com

Re: Residential Funding Corporation ("RFC") as Seller and Master Servicer

Dear Tim:

I write concerning our effort at negotiations regarding the attached Trusts (the "Trusts"), which are established pursuant to various Pooling and Servicing Agreements ("PSAs"). Terms not otherwise defined have the meanings set forth in the PSAs.

This firm represents a significant number of clients with beneficial interests in the Trusts. The firm has approached RFC and its parent Ally seeking to negotiate solutions to problems respecting the Trusts. I think you will agree that in our attempt at negotiations, the firm and its clients have been forthright, courteous, and respectful. We have avoided posturing. We have offered to serve as a resource for solutions rather than a source of problems.

Unfortunately, meetings have been delayed, and Ally has failed to provide responses to offers of compromise. To move negotiations forward, we have offered various paths for solutions. Ally has not provided any indication as to whether one or more of those paths offer hope for resolution.

Meanwhile, we continue to hear rumors and see media reports that Ally is engaged in extensive negotiations with entities that have interests adverse to, or that will affect those of, our clients. We have heard a bankruptcy filing is being contemplated no later than the end of the month. Our clients are justifiably concerned that Ally may be holding out on us so it can place RFC in bankruptcy and force an untenable resolution on our clients (the "Potential Strategy").

I write to remind Ally of several things that it should consider if it intends to pursue the Potential Strategy outlined above. *First*, Ally is ultimately largely owned by the United States taxpayers, and should conduct itself with the same business ethics that most Americans would apply to their

TALCOTT FRANKLIN P.C.

March 22, 2012

Page 2

daily affairs. The Potential Strategy, if pursued by Ally, is both underhanded and entirely inconsistent with the ethics most Americans expect from themselves and their children.

Second, the Potential Strategy is also inconsistent with Ally's recent advertising campaign, and any pursuit of the Potential Strategy will directly and forcefully undermine Ally's recent effort to re-brand itself, including the widely circulated pony commercial that concludes: "Even kids know it's wrong to hold out on somebody. Why don't banks?"

Third, the firm's clients have instructed the Trustee of each RALI Trust to not engage in any settlement discussions affecting our clients' interests without also involving our clients in the negotiations. It is therefore pointless to avoid negotiations with the firm's clients, as the Trustee at issue is unlikely to favor one group of Certificateholders over another or ignore a reasonable instruction.

I repeat that our clients are interested in engaging in a substantive dialogue that resolves the issues respecting RFC's repurchase obligations and servicing. I look forward to a response no later than Monday as to when such negotiations can take place.

Sincerely,

Talcott J. Franklin

TALCOTT FRANKLIN P.C.
March 22, 2012
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TRUSTS

RALI 2002-QS19	RALI 2006-QS10
RALI 2003-QS14	RALI 2006-QS11
RALI 2003-QS15	RALI 2006-QS14
RALI 2004-QA1	RALI 2006-QS16
RALI 2004-QS1	RALI 2006-QS17
RALI 2004-QS3	RALI 2006-QS3
RALI 2004-QS4	RALI 2006-QS4
RALI 2004-QS5	RALI 2006-QS5
RALI 2005-QA12	RALI 2006-QS6
RALI 2005-QA2	RALI 2006-QS7
RALI 2005-QA8	RALI 2006-QS8
RALI 2005-QO1	RALI 2006-QS9
RALI 2005-QO4	
RALI 2005-QS9	RALI 2007-QA2
RALI 2005-QS13	RALI 2007-QA3
RALI 2005-QS15	RALI 2007-QH2
RALI 2005-QS16	RALI 2007-QH3
RALI 2005-QS17	RALI 2007-QH4
RALI 2005-QS2	RALI 2007-QH6
RALI 2005-QS3	RALI 2007-QH7
RALI 2005-QS5	RALI 2007-QH9
RALI 2006-QA3	RALI 2007-QO2
RALI 2006-QA8	RALI 2007-QS1
RALI 2006-QH1	RALI 2007-QS2
RALI 2006-QO1	RALI 2007-QS5
RALI 2006-QO3	RALI 2007-QS6
RALI 2006-QO4	RFMSI 2007-S4
RALI 2006-QO5	
RALI 2006-QO8	

A. 26

REDACTED